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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DODGER, INC.; GOLD, INC.; BORUJ, INC.; and SALOMON HELFON TUACHI,

Petitioners,

v.

INTERACTIVE DATA CORP.; INTERACTIVE DATA PRICING AND REFERENCE DATA, INC.; and DOES 1 through 10, Inclusive,

Respondents.

CASE NO. 08-CV-1476-JM-POR

INTERACTIVE DATA CORP. AND INTERACTIVE DATA PRICING AND REFERENCE DATA, INC.'S OPPOSITION TO *EX PARTE* APPLICATION FOR ORDER ENFORCING FINRA SUBPOENA OR, IN THE ALTERNATIVE, SETTING A HEARING AT THE EARLIEST POSSIBLE DATE WITH LEAVE TO CONDUCT DISCOVERY

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The Respondents, INTERACTIVE DATA CORP. ("IDCO") and INTERACTIVE DATA PRICING AND REFERENCE DATA, INC. ("PRD") (collectively, "Interactive Data"), hereby oppose Petitioners' *Ex Parte* Application for Order Enforcing FINRA Subpoena or, in the Alternative, Setting a Hearing at the Earliest Possible Date with Leave to Conduct Discovery (the "Application").

This is not a garden-variety discovery dispute. While Petitioners assert that the sole issue involved is the enforceability of a FINRA arbitration subpoena, see Petitioners' Memorandum[1] at 2, this characterization omits the most critical information: The arbitration subpoena was issued to Interactive Data, which is *not a party* to the arbitration proceeding, and seeks from it an enormous volume of documents that are not relevant or material to Petitioners' claims against the defendants in the arbitration, and required that the documents be produced only two business days after the subpoena was served. Indeed, the subpoena represents nothing more than a disguised fishing expedition, evidently initiated in the hope that it will uncover information leading to a claim against Interactive Data.[2] However, the Federal Arbitration Act, 9 U.S.C. §§ 1, et seq., which governs the arbitration, prohibits just this type of fishing expedition, as it does not permit arbitrators to issue subpoenas for pre-hearing discovery to those, like Interactive Data, who are not parties to the arbitration and did not agree to submit to the authority of a particular arbitral forum. Accordingly, the arbitration subpoena is unenforceable as a matter of law.

Moreover, responding to the subpoena would be enormously burdensome, expensive (producing documents in response to the subpoena, as written, would cost Interactive Data close to $2 million[3]) and time-consuming for Interactive Data, and, as such, would cause substantial

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[1] Petitioners' "Memorandum of Points and Authorities in Support of *Ex Parte* Application for Order Enforcing FINRA Subpoena or, in the Alternative, Setting a Hearing at the Earliest Possible Date with Leave to Conduct Discovery" is referred to herein as "Petitioners' Memorandum."

[2] As the facts below demonstrate, there would be no basis for a claim against Interactive Data, and Petitioners would not have standing to assert one. However, that is beside the point, as Petitioners clearly are not entitled to documents that are not relevant to the existing claims and defenses in the arbitration proceeding out of which the subpoena issued.

[3] This is twice the alleged actual damages prayed for in Petitioner Dodger, Inc.'s Statement of Claim in the Arbitration. See Ex. 2 to Miller Declaration ("Miller Decl.") (filed in support of

(continued…)

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disruption to its business. Enforcement should be denied on this basis, as well. Even if the subpoena were styled not as a discovery subpoena, but as a subpoena directing Interactive Data to bring documents with it to the arbitration hearing, its burden and overbreadth, and the immateriality of the documents it seeks, would be grounds to deny enforcement. See, e.g., 9 U.S.C. § 7 (arbitrators may only issue subpoenas for witnesses to bring to an arbitration hearing documents that are "material as evidence in the case.").

Notwithstanding the unenforceability of the subpoena on multiple grounds, Interactive Data engaged in good faith negotiations with Petitioners in an attempt to reach an agreement on a reasonable, more narrowed production in response to the subpoena. Last week, Interactive Data sent a written proposal to Petitioners, outlining such a proposed, narrowed production. Petitioners rejected that proposal and filed the *Ex Parte* Application that is now before the Court.

I. BACKGROUND

A. The Parties, the Underlying Arbitration and the Arbitration Subpoena

1. IDCO and PRD

IDCO is a global provider of financial market data, analytics and related services to financial institutions, active traders and individual investors. Its businesses supply real-time market data, pricing, evaluations and reference data for millions of securities traded around the world, including hard-to-value instruments. PRD, a subsidiary of IDCO, is a source to the institutional investment community for market data and financial information. It collects, edits, maintains and delivers data on more than six million securities, including daily evaluations for approximately 2.5 million fixed income and international equity issues. Declaration of Sigal Lewkowicz ("Lewkowicz Decl.") (Exhibit B to Declaration of Laura McLane ("McLane Decl.")) ¶¶3-4. Among the securities evaluated by PRD are Collateralized Mortgage Obligations, commonly referred to as "CMOs." CMOs are securities backed by pools of mortgages. See Petitioners' Memorandum at 7. PRD considers information including its proprietary models, available quotes, trade, and other market data to determine evaluations for CMOs and other

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Petitioners' Application).

securities. Evaluations constitute Interactive Data's good faith opinions as to the price that an institutional buyer in the marketplace would pay for a security in a current sale. Supplemental Declaration of Sigal Lewkowicz ("Supp. Lewkowicz Decl.") (Ex. L to McLane Decl.) ¶3.

2. Petitioners, Brookstreet and NFS

According to their submissions, Petitioners were purchasers of certain high-risk classes of CMOs. Petitioners used Brookstreet Securities Corporation ("Brookstreet"), a respondent in the underlying arbitration, as their brokerage firm, and Brookstreet contracted with National Financial Services, LLC ("NFS") to provide clearing services to Brookstreet. See generally Statement of Claim ("Arbitration Complaint") (Ex. 2 to Miller Decl.).

NFS used pricing data obtained from Interactive Data[4] and another vendor to provide daily pricing estimates for CMOs. See Respondent National Financial Services, LLC's Answer (Ex. 3 to Miller Decl.) at 10. Interactive Data functioned solely as a source of evaluated pricing information for NFS, among numerous other customers. Interactive Data provides the same evaluations to all of its thousands of customers. Supp. Lewkowicz Decl. ¶4. Interactive Data was not involved with what NFS did with that information, in extending margin credit to Brookstreet, or in dealing with Petitioners, and there are no contrary allegations. Id. Moreover, Petitioners acknowledge that when NFS received evaluated prices for the CMOs from Interactive Data, NFS was not provided with the underlying data used by Interactive Data to determine those evaluations. See Petitioners' Memorandum at 6.

3. The Subprime Mortgage Crisis

In 2007, the so-called housing bubble in the United States effectively burst. Many properties purchased with subprime and adjustable rate mortgages could not be refinanced, resulting in numerous defaults and foreclosures. Many investors in CMOs suffered losses. Petitioners purport to be among the investors who sustained such losses.

4. Petitioners' Claims Against Brookstreet and NFS in the FINRA Arbitration

As a result of their alleged losses, Petitioners have asserted claims in a FINRA arbitration

[4] PRD is the entity that actually performs this work, but PRD and IDCO, as the recipients of the subpoena, are referred to collectively herein as "Interactive Data."

proceeding pending in California against Brookstreet, NFS, and others for securities fraud, common law fraud, breach of fiduciary duty, negligence, and other claims. The essence of Petitioners' claims is that Brookstreet invested their funds that "were earmarked for conservative fixed income investments – on margin" in much higher-risk securities, such as the CMOs at issue here, and that Brookstreet and NFS "systematically overstated" the value of the CMOs held by Petitioners. When those values declined in 2007, margin calls were triggered, forcing the CMOs to be sold and Petitioners to realize losses. See Arbitration Complaint generally and ¶¶8, 11.

5. The Arbitration Subpoena to Interactive Data

At Petitioners' request, the arbitration panel issued a subpoena to Interactive Data – not a party to the arbitration – seeking a vast amount of information covering a nearly four-year period relating to its evaluations of CMOs, Brookstreet, and NFS. See Subpoena to Interactive Data Corporation (Ex. A to McLane Decl.). As a non-party to the arbitration proceeding, Interactive Data received no notice of the request to the arbitration panel that the subpoena be issued, and had no opportunity to object to the scope of the subpoena. While the subpoena is dated April 25, 2008, Interactive Data was not served with the subpoena until May 16, 2008, two business days before the date on which the documents were purportedly due. Id.; McLane Decl. ¶3. The information sought in the subpoena includes "all documents relating to the pricing" of the CMOs from January 2004 through September 2007, a request which purportedly includes all of the underlying data, information and processes used by Interactive Data to determine the value of particular securities. See Ex. A to McLane Decl. at Request No. 1. This is a voluminous and proprietary body of information. It is also not relevant to Petitioners' claims in the arbitration: the materials, data and information on which Interactive Data based the evaluations provided to NFS simply *bear no relationship* to whether NFS or Brookstreet improperly invested Petitioners' funds, or whether they misrepresented the market value of those investments. Rather, this is a fishing expedition into the records of Interactive Data, against whom no claim is pending.[5] These

[5] It appears that Petitioners are looking to uncover information suggesting that Interactive Data somehow misapplied the underlying data, or committed some other kind of error, in determining the evaluations that were provided to NFS. However, there is no claim pending against Interactive Data of any kind, and allowing Petitioners to use an arbitration subpoena as a means to (continued…)

issues are discussed more fully in the Argument, below. See Section III, infra.

B. The Initiation of this Action Against Interactive Data

On May 20, 2008, Counsel for Interactive Data notified Petitioners' Counsel that the subpoena was unenforceable because (1) it purports to seek pre-hearing discovery from a non-party in aid of an arbitration proceeding, in violation of the Federal Arbitration Act, 9 U.S.C. §§ 1, et seq. ("FAA"); (2) it is enormously overbroad and unduly burdensome; and (3) it imposed an unreasonably short return date for production within two business days of service. Ex. C to McLane Decl.

On June 3, 2008, Counsel for Petitioners requested more information from Interactive Data about the undue burden and expense that responding to the subpoena would impose upon them. Ex. D to McLane Decl. On June 10, 2008, Counsel for Interactive Data sent Petitioners' counsel a letter detailing the enormous amount of effort, time and expense that responding to the subpoena would require.[6] Ex. E to McLane Decl. For example, responding just to the subpoena's first request would have required, among other things, at least 33,750 hours of work, review of over 100 million evaluations, and an expensive and time consuming restoration of employees' e-mail databases. Id. Moreover, the letter informed counsel for Petitioners that the majority of the information sought in the subpoena was available from the parties to the arbitration. Id.

At no time did Petitioners' counsel initiate any discussions or advance any proposals for narrowing the subpoena's sweeping requests, or otherwise seek to reach an agreement short of litigation. McLane Decl. ¶8. Instead, on July 15, 2008 – nearly one month after the last

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attempt to manufacture such a claim – even assuming they could establish standing, which they cannot – is improper. Moreover, such a claim would lack merit, as Interactive Data supplied evaluated pricing information based on proprietary models, analysis and review of market factors, and had no relationship with Petitioners. Indeed, it appears that Petitioners' alleged losses were caused by nothing more than the decline of the housing market and its effect on the risky mortgages that backed the securities into which Petitioners invested.

[6] The letter also reiterated that fact that, even leaving aside the subpoena's overbreadth and undue burden, the subpoena is unenforceable under the FAA. Id.

correspondence between counsel for Petitioners and counsel for Interactive Data – Petitioners served Interactive Data with a Petition for Order to Show Cause re Contempt for Failure to Comply with Subpoena issued by FINRA Arbitrator in the Superior Court of California for the County of San Diego, Case No. 37-2008-00056017-CU-PT-NC.[7] Respondents removed the action to this Court, and filed an Answer to the Petition, on August 13, 2008.

Petitioners' counsel never advanced any proposals or engaged in any substantive discussions with Interactive Data's counsel in an effort to reach agreement regarding the subpoena's requests before the action was removed and Interactive Data's Answer was filed. It was not until August 15, 2008, two days after removal and the filing of the Answer, that counsel for the Petitioners for the first time sought to initiate discussions to seek agreement regarding production "on a narrowed basis." Ex. F to McLane Decl.

C. Efforts to Minimize The Subpoena's Burdens

On August 19, 2008, counsel for Petitioners and counsel for Interactive Data participated in a telephone conversation in which they discussed the subpoena, and potential proposals for narrowing it. McLane Decl. ¶9. On August 21, 2008, counsel participated in a follow-up telephone conversation. Id. During that call, proposals for narrowing were discussed further, and Interactive Data's counsel asked Petitioners' counsel for more information regarding the requests, including information about their relevance to the claims in the arbitration. Id. ¶10. Interactive

[7] While Petitioners have styled their action as one for "Contempt," a contempt action must be founded upon disobedience to a court order. Reno Air Racing Ass'n v. McCord, 452 F.3d 1126, 1130 (9th Cir. 2006); accord, e.g., Irwin v. Mascott, 370 F.3d 924, 932 (9th Cir. 2004). Here, there is no court order at all but, rather, a discovery subpoena issued by an arbitral forum to which Interactive Data did not agree to submit. Moreover, several Ninth Circuit decisions indicate that a person cannot be adjudged in contempt unless her disobedience of the court order in question was willful. See, e.g., Irwin, 370 F.3d at 932 (citing Shuffler v. Heritage Bank, 720 F.2d 1141, 1146 (9th Cir. 1983)); see, e.g., SEC v. Int'l Swiss Inv. Corp., 895 F.2d 1272, 1277 (9th Cir. 1990) (citing same) (superseded by statute on other grounds); see also United States v. Baker, 641 F.2d 1311, 1317 (9th Cir. 1981) ("Willfulness is defined as a volitional act done by one who knows or should reasonably be aware that his conduct is wrongful.") (citations and internal quotation marks omitted). All agree at least that "a person should not be held in contempt if his action appears to be based on a good faith and reasonable interpretation of [such an] order." See, e.g., Reno Air Racing, 452 F.3d at 1130 (quoting In re Dual-Deck Video Cassette Recorder Antitrust Litig., 10 F.3d 693, 695 (9th Cir. 1993)) (internal quotation marks omitted). Interactive Data has not willfully disobeyed the subpoena, as the subpoena is unenforceable because it violates the FAA, it imposed an unreasonably short time of two business days to respond, and it is unreasonably overbroad and unduly burdensome.

Data's counsel indicated a willingness to continue working with Petitioners' counsel in order to reach an agreement, notwithstanding the unenforceability of the subpoena, but also indicated that the person at Interactive Data with the most knowledge of the issues was out of the country (on vacation in Israel) until Labor Day, so a definitive agreement would not be reachable until after the holiday. Id. ¶11; see also Ex. G to McLane Decl. Counsel for Petitioners subsequently sent a letter to counsel for Interactive Data, claiming that Petitioners could not wait until after Labor Day to seek resolution, notwithstanding the fact that they waited three months after serving the subpoena to initiate discussions regarding an agreement for production. Petitioners' counsel also failed to provide any answers to Interactive Data's counsel's previous requests for information regarding certain of the requests. Ex. H to McLane Decl.

On August 25, 2008, in a final effort to resolve the issue, and after several conference calls with the Interactive Data representative on vacation in Israel, counsel for Interactive Data sent a written proposal to counsel for Respondents, agreeing to a production of documents on a narrowed basis, despite the subpoena's unenforceability under the FAA (the specifics of the proposals are discussed in Section III, below, and are set forth in the letter attached as Exhibit I to the McLane Decl.). No response to this proposal was received before Petitioners filed the instant Application with this Court on an *ex parte* basis.[8] On August 28, 2008, Petitioners' counsel, claiming they had not received the fax transmission containing the August 25, 2008 letter, sent a reply to that letter, the substance of which indicated that, notwithstanding Interactive Data's proposed production, no agreement could be reached. Petitioners' counsel again failed to provide any information responsive to Interactive Data's questions regarding the subpoena's individual requests. Ex. J to McLane Decl.

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[8] Petitioners did not comply with the prerequisites for seeking *ex parte* relief, which is inexcusable, particularly given that Petitioners' Application seeks dispositive relief on the merits of this action. Interactive Data only learned of the Application after being served with a copy of it the day after it was filed; no efforts were made by Petitioners' counsel to inform Interactive Data of the impending filing; and there is no reason (nor is one offered by Petitioners) that Interactive Data should not have been so informed. See CivLR 83.3(h).

II. THE ARBITRATION SUBPOENA IS UNENFORCEABLE AS A MATTER OF LAW.

A. The Arbitration Subpoena Seeks Pre-Hearing Discovery from a Non-Party in Violation of the Federal Arbitration Act.

1. The FAA Applies to FINRA Arbitrations.

Petitioners contend that FINRA securities arbitrations are not "circumscribed" by the FAA. See Petitioners' Memorandum at 12. This contention is without merit. "The FAA applies when there is federal subject matter jurisdiction, *i.e.*, diversity jurisdiction, and when the contract calling for arbitration 'evidences a transaction involving interstate commerce.'" Barbier v. Shearson Lehman Hutton, Inc., 948 F.2d 117, 120 (2d Cir. 1991) (quoting 9 U.S.C. § 2; citing Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 25 n.32 (1983)) (rejecting claim that securities arbitration before New York Stock Exchange[9] was not subject to the FAA). There is no question that these requirements are met here. Moreover, lest there be any doubt, FINRA itself *actually incorporates* the entirety of the FAA in numerous places on its website. Ex. K to McLane Decl.[10]

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[9] As Petitioners point out, FINRA "was created in July 2007 through the consolidation of the National Association of Securities Dealers (NASD) and the member regulation, enforcement and arbitration functions of the New York Stock Exchange." Petitioners' Memorandum at 9.

[10] Petitioners cite Volt Information Services, Inc. v. Board of Trustees of Leland Stanford Univ., 489 U.S. 468 (1989) – which did not involve a FINRA securities arbitration – for the proposition that the FAA does not govern FINRA arbtrations. However, Volt merely held that the FAA does not preempt a conflicting state statute authorizing a stay of arbitration "*where the parties have agreed that their arbitration agreement will be governed by the [state statute].*" Id. at 470 (emphasis added). That holding is irrelevant to this matter: (1) Volt dealt with a dispute between the *parties* to the arbitration agreement and the effect of a choice of law clause contained therein, but here, Interactive Data is not a party to the arbitration agreements in question; (2) Volt did not address the issue of non-party discovery in arbitration; and (3) Interactive Data understands that, if the parties' agreements are governed by any state's procedural arbitration law (and they are not), it would be Massachusetts law, which, consistent with the FAA and as discussed below, does not permit pre-hearing discovery subpoenas to non-parties. Indeed, the Volt court held that "it is undisputed that this contract falls within the coverage of the FAA, since it involves interstate commerce…." Id. at 476. However, as the parties in Volt had selected California law to govern, the FAA did not preempt a California provision staying arbitration. Moreover, after Volt, the Supreme Court confirmed that the FAA's rules concerning the powers of arbitrators govern when the parties' agreement does not specify otherwise. See Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52, 58-64 (1995) (holding that New York law restricting ability of arbitrators to award punitive damages was inapplicable despite the fact that the agreement selected New York law to govern, as the FAA permitted arbitrators to award punitive damages; the choice-of-law clause encompassed the "substantive principles that New York courts would apply, but [did] not

(continued…)

Thus, while Petitioners claim that they "are not aware of a single case on-point holding that FINRA arbitrations are circumscribed by the FAA," Petitioners' Memorandum at 12, such cases nevertheless exist, and they dispose of Petitioners' contention. The FINRA arbitration at issue in this case is subject to the FAA.

2. The FAA Does Not Authorize Arbitrators to Issue Subpoenas for Pre-Hearing Discovery to Non-Parties.

Section 7 of the FAA provides, in relevant part, as follows:

> § 7. Witnesses before arbitrators; fees; compelling attendance
>
> The arbitrators selected either as prescribed in this title or otherwise, or a majority of them, may summon in writing any person *to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case.* The fees for such attendance shall be the same as the fees of witnesses before masters of the United States courts. Said summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the court; . . . .

9 U.S.C. § 7 (emphasis added).

Section 7 of the FAA does not permit arbitrators to issue subpoenas for pre-hearing discovery from non-parties. In the most recent federal appellate case to decide the issue, the United States Court of Appeals for the Third Circuit squarely held that Section 7 of the FAA prohibits arbitrators from issuing subpoenas for pre-hearing discovery to non-parties. See Hay Group, Inc. v. E.B.S. Acquisition Corp., 360 F.3d 404, 411 (3rd Cir. 2004). In Hay, a claimant in an arbitration concerning alleged violations of a non-solicitation agreement served discovery subpoenas for production of documents on non-parties to the arbitration. 360 F.3d at 405. The Third Circuit Court of Appeals reversed the District Court's order enforcing the subpoenas, and in doing so engaged in a careful analysis of Section 7 of the FAA. See id. at 406-13. The Court first noted that "***[a]n arbitrator's authority over parties that are not contractually bound by the arbitration agreement is strictly limited to that granted by the Federal Arbitration Act.***" Id. at

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[] include special rules limiting the authority of arbitrators.").

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406 (emphasis added).

The Court then analyzed the text of Section 7 of the FAA, quoted above, and held as follows:

> This language speaks unambiguously to the issue before us. The only power conferred on arbitrators with respect to the production of documents by a non-party is the power to summon a non-party "to attend before them or any of them as a witness *and* in a proper case *to bring with him or them* any book, record, document or paper which may be deemed material as evidence in the case. 9 U.S.C. § 7 (emphasis added). The power to require a non-party "to bring" items "with him" clearly applies only to situations in which the non-party accompanies the items to the arbitration proceeding, not to situations in which the items are simply sent or brought by a courier. In addition, the use of the word "and" makes it clear that a non-party may be compelled "to bring" items "with him" only when the non-party is summoned "to attend before [the arbitrator] as a witness." Thus, Section 7's language unambiguously restricts an arbitrator's subpoena power to situations in which the non-party has been called to appear in the physical presence of the arbitrator and to hand over the documents at that time.

Id. at 407 (italics in original).

The Hay court rejected the holdings of the few courts that have held that Section 7 impliedly confers upon arbitrators the power to issue pre-hearing subpoenas for discovery to non-parties,[11] finding that, "[b]y conferring the power to compel a non-party witness to bring items to an arbitration proceeding while saying nothing about the power simply to compel the production of items without summoning the custodian to testify, the FAA implicitly withholds the latter power. If the FAA had been meant to confer the latter, broader power, we believe that the drafters would have said so. . . ." 360 F.3d at 408-09.

Finally, the Hay court held that "a literal reading of Section 7 actually furthers arbitration's goal of 'resolving disputes in a timely and cost efficient manner.'" Id. at 409 (quoting Painewebber, Inc. v. Hofmann, 984 F.2d 1372, 1380 (3rd Cir. 1993)). The court stated:

> [I]t is not absurd to read the FAA as circumscribing an arbitration panel's power to affect those who did not agree to its jurisdiction. See Legion Ins. Co. [v. John Hancock Mut. Life Ins. Co. (In re Arbitration), 2001 U.S. Dist. LEXIS 15911 at *4 (E.D. Pa. Sept. 5, 2001)] ("the authority of arbitrators with respect to non-parties

[11] See, e.g., Security Life Ins. Co. of Am. v. Ducanson & Holt, Inc., 228 F.3d 865, 870-71 (8th Cir. 2000); Meadows Indem. Co., Ltd. v. Nutmeg Ins. Co., 157 F.R.D. 42, 45 (M.D. Tenn. 1994).

> who have never agreed to be involved in arbitration is severely limited."). The requirement that document production be made at an actual hearing may, in the long run, discourage the issuance of large-scale subpoenas upon non-parties. This is so because parties that consider obtaining such a subpoena will be forced to consider whether the documents are important enough to justify the time, money and effort that the subpoenaing parties will be required to expend if an actual appearance before an arbitrator is needed. *Under a system of pre-hearing document production, by contrast, there is less incentive to limit the scope of discovery and more incentive to engage in fishing expeditions that undermine some of the advantages of the supposedly shorter and cheaper system of arbitration.*

Id. at 409 (emphasis added) (citing COMSAT Corp. v. NSF, 190 F.3d 269, 276 (4th Cir. 1999)). See also Odjfell ASA v. Celanese AG, 328 F. Supp. 2d 505, 507 (S.D.N.Y. 2004) ("The Court agrees with the Third Circuit, and adds only that, inasmuch as arbitration is largely a matter of contract, ***it would seem particularly inappropriate to subject parties who never agreed to participate in the arbitration in any way to the notorious burdens of pre-hearing discovery***. Arbitration, which began as a quick and cheap alternative to litigation, is increasingly becoming slower and more expensive than the system it was designed to displace, and permitting pre-hearing discovery of non-parties would only make it more so.") (emphasis added).

The subpoena at issue here underscores the concerns explained in Hay. Its breadth indicates that it is truly nothing other than a fishing expedition seeking a vast volume of documents, the majority of which are not relevant to the claims in the underlying arbitration. This runs contrary to both the general purposes of arbitration, and the mandates of the FAA.

COMSAT, the Fourth Circuit's decision cited in Hay, similarly held that Section 7 of the FAA does not give an arbitrator the authority to issue subpoenas for pre-hearing discovery to non-parties. See 190 F.3d at 278. The COMSAT court held that "[t]he subpoena powers of an arbitrator are limited to those created by the express provisions of the FAA. . . . Nowhere does the FAA grant an arbitrator the authority to order non-parties to appear at depositions, or the authority to demand that non-parties provide the litigating parties with documents during pre-hearing discovery." 190 F.3d at 275. The court reasoned that:

> The rationale for constraining an arbitrator's subpoena power is clear. Parties to a private arbitration agreement forego certain procedural rights attendant to formal

> litigation in return for a more efficient and cost-effective resolution of their disputes. A hallmark of arbitration – and a necessary precursor to its efficient operation – is a limited discovery process.

Id. at 276 (citations omitted).[12]

Petitioners attempt to distinguish the foregoing cases on the grounds that they do not involve FINRA arbitrations, but that is a distinction without a difference. See Petitioners' Memorandum at 13 (claiming that, because Hay was not a FINRA arbitration, it is inapposite). If an arbitration of any type is governed by the FAA – as the instant arbitration clearly is – then the FAA's provisions, and limitations, apply. The FAA's provisions are not selective, and do not become less potent depending upon the subject matter of the arbitration in question.

Petitioners also rely heavily on the North District of Georgia's opinion in Festus & Helen Stacy Foundation, Inc. v. Merrill Lynch, Pierce Fenner, & Smith, Inc., 432 F. Supp. 2d 1375 (N.D. Ga. 2006), but that case is an outlier that runs contrary to the reasoned case law discussed above. In Festus, the court applied little reasoning to its determination that Section 7 of the FAA permits arbitrators to issue pre-hearing discovery subpoenas to non-parties, and relied primarily upon the fact that the NASD panel itself determined it had the authority to issue the subpoena in question. See 423 F. Supp. 2d at 1379. The Festus court's reasoning thus suggests that an NASD arbitration panel can unilaterally act without regard to the federal statute governing arbitration. This conclusion defies logic and, as discussed in the following subsection, is simply not an accurate statement of the law. See subsection 3, infra. The Festus court also stated that "[t]he parties in the instant matter do not dispute that they agreed to arbitrate the underlying suit. Accordingly, the NASD Panel had the authority to determine the scope of discovery and it did so." Festus, 432 F. Supp. 2d at 1379. This rationale ignores the fact that the subpoena in question in that case, as here, was to a non-party who had not agreed to submit arbitration. Such non-parties should be afforded all of the protections of the FAA which, by its own terms, does not authorize arbitrators to issue pre-hearing discovery subpoenas to non-parties. This Court is not bound to follow Festus, nor should it (tellingly, no other published court decision has).[13] Rather, this Court should conclude, consistent with the Third and Fourth Circuits and the cases following them, that Section 7 of the FAA does not allow arbitrators to issue subpoenas for pre-hearing discovery to non-parties, rendering the present subpoena unenforceable.

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[12] The COMSAT court stated that in unusual circumstances, special need or hardship could permit a party to petition the district court to allow some amount of pre-hearing discovery, but that, "at a minimum, a party must demonstrate that the information it seeks is otherwise unavailable." 190 F.3d at 276. Here, much of the information sought is available from parties to the arbitration, and the rest is wholly immaterial to the claims and defenses therein. See Section III, infra.

3. FINRA's Procedural Rules Do Not Override the FAA.

Petitioners contend that FINRA's rules permit arbitrators to issue pre-hearing discovery subpoenas to non-parties. See Petitioners' Memorandum at 11-12. This argument fails. First, Interactive Data is not a party to the arbitration agreements in question, and as such did not agree to submit to – and therefore is not bound by – FINRA's procedural rules. Thus, while the parties to the arbitration may invoke FINRA's rules as against one another, Interactive Data, as a non-party, is not bound by such rules. See Hay, 360 F.3d at 406.

Moreover, "NASD rules are not 'law.'" Max Marx Color & Chem. Co. Employees' Profit Sharing Plan v. Barnes, 37 F. Supp. 2d 248, 253 (S.D.N.Y 1999) ("Petitioners must point to a statutory violation to warrant vacatur of an arbitral award, not a violation of the [NASD] code of arbitration procedure."). Thus, to the extent FINRA's rules are construed to conflict with the FAA, the federal statute promulgated by Congress, and not the rules promulgated by FINRA (a self-regulatory organization) must govern.[14] Petitioners' construction of FINRA's rules to permit

[13] Petitioners also rely on a magistrate judge's decision from the Middle District of Tennessee in Meadows, 157 F.R.D. 42, and suggest that it involved a FINRA arbitration. See Petitioner's Memorandum at 16 (characterizing Meadows as holding that "the FINRA arbitrator [is] empowered to issue and enforce the subpoena"). First, Meadows did not involve a FINRA (or NASD) arbitration. More importantly, it was decided before the decisions in Hay and COMSAT; it is not binding on this Court; and it improperly reads an "implied" power to issue discovery subpoenas to non-parties into the FAA, notwithstanding the absence of any such power in the actual terms of the statute. See 157 F.R.D. at 45. Again, a reasoned analysis of the terms of Section 7 yields the conclusion that its "language unambiguously restricts an arbitrator's subpoena power to situations in which the non-party has been called to appear in the physical presence of the arbitrator and to hand over the documents at that time." See Hay, 360 F.3d at 407.

[14] While the 9th Circuit has held that, because certain NASD rules have been approved by the SEC, they preempt conflicting *state* law, Credit Suisse First Boston Corp. v. Grunwald, 400 F.3d 1119, 1121 (9th Cir. 2005), those rules do not – and cannot – preempt a federal statute, such as the FAA. Indeed, to the extent the FINRA rules are characterized as akin to federal regulations, they are invalid if they conflict with the FAA. "A federal regulation in conflict with a federal

(continued…)

the issuance of pre-hearing discovery subpoenas to non-parties conflicts with the FAA, which does not confer such powers on arbitrators for the reasons discussed above.

B. California Law Does Not Provide a Basis for Enforcing the Subpoena.

Petitioners contend that irrespective of the FAA, California arbitration law applies, and that the subpoena is enforceable under California law. First, California law is inapplicable. Moreover, even if California law did apply, it does not permit arbitrators to issue subpoenas to non-parties in arbitrations of the type at issue here.

1. The FAA Trumps California Arbitration Law.

The Ninth Circuit has repeatedly recognized that "there is a strong default presumption that the Federal Arbitration Act, not state law, supplies the rules for arbitration." See New Regency Prods., Inc. v. Nippon Herald Films, Inc., 501 F.3d 1101, 1104 (9th Cir. 2007) (quoting Fidelity Fed. Bank, FSB v. Durga Ma Corp., 386 F.3d 1306, 1311 (9th Cir. 2004)); accord Sovak v. Chugai Pharm. Co., 280 F.3d 1266, 1269 (9th Cir. 2002), modified on other grounds, 289 F.3d 615 (9th Cir. 2002) (*en banc*), cert. denied, 537 U.S. 825 (2002). Parties to an arbitration agreement can choose different rules by contract, but their agreement must "clearly evidence" their intent to do so. Sovak, 280 F.3d at 1268 (citing, *inter alia*, Mastrobuono, 514 U.S. at 61-62). The presence of a "general choice-of-law clause within an arbitration provision" is insufficient. Id. at 1269 (citations omitted).

Here, Interactive Data understands that the agreements among the parties to the arbitration do not select California law, and Petitioners have not suggested otherwise. McLane Decl. ¶19. Indeed, it is Petitioners' burden to demonstrate such clear intent to select law other than the FAA, see Certain Underwriters at Lloyd's, London v. Argonaut Ins. Co., 264 F. Supp. 2d 926, 933

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statute is *invalid* as a matter of law." Watson v. Proctor (In re Watson), 161 F.3d 593, 598 (9th Cir. 1998) (citing Chem. Mfrs. Ass'n v. Natural Res. Defense Council, Inc., 470 U.S. 116, 126 (1985)) (emphasis in original). Relatedly, "no deference is due to agency interpretations at odds with the plain language of the statute itself. Even contemporaneous and longstanding agency interpretations must fall to the extent they conflict with statutory language." Pub. Employees Ret. Sys. v. Betts, 492 U.S. 158, 171 (1989) (superseded by statute on other grounds) (emphasis added). Moreover, Grunwald did not involve arbitration discovery at all, much less arbitration subpoenas to non-parties. 400 F.3d at 1121-23.

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(N.D. Cal. 2003) (Chen, U.S.M.J.), and they have not done so. In fact, Interactive Data is aware that the various agreements among the parties to the arbitration selected Massachusetts law to govern aspects of their relationship. McLane Decl. ¶19. It is not clear to what extent that choice-of-law clause applies here (Interactive Data is not privy to the agreements) but, in any case, Massachusetts law, like the FAA, does not authorize arbitrators to issue subpoenas for pre-hearing discovery to non-parties. See Mass. Gen. Laws c. 251, § 7(e) ("Any party to an arbitration proceeding may serve upon any other *party* a request for the production of documents . . . .") (emphasis added). Moreover, Interactive Data is not a party to the arbitration or to any of the agreements to arbitrate, and thus has not agreed to submit to the arbitration law of *any* state. In these circumstances, the Federal law of arbitration governs.

Even if the FAA were not the default rule in the absence of a contrary arbitration agreement, a finding that California law permits arbitrators to issue subpoenas for pre-hearing discovery to non-parties would be in direct conflict with Section 7 of the FAA, and would therefore be preempted. The Supremacy Clause of the United States Constitution "invalidates state laws that interfere with, or are contrary to, federal law." Engine Mfrs. Ass'n v. S. Coast Air Quality Maint. Dist., 498 F.3d 1031, 1039 (9th Cir. 2007) (quoting Hillsborough County v. Automated Med. Labs., Inc., 471 U.S. 707, 712 (1985)) (internal quotation marks omitted). This occurs when, *inter alia*, state law "actually conflicts with federal law," Volt, 489 U.S. at 477; Engine Mfrs. Ass'n., 498 F.3d at 1039 (citation omitted); more specifically, "where compliance with both federal and state regulations is a physical impossibility, or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Olympic Pipe Line Co. v. City of Seattle, 437 F.3d 872, 877 (9th Cir. 2006) (citation and internal quotation marks omitted); accord Bernhardt v. County of Los Angeles, 339 F.3d 920, 929 (9th Cir. 2003).

The Supreme Court has recognized that Congress' primary purpose in passing the FAA was "to enforce agreements into which parties had entered," including "***not*** requir[ing] parties to arbitrate when they have not agreed to do so." Volt, 489 U.S. at 478 (quoting Dean Witter Reynolds Inc. v. Byrd, 470 U.S. 213, 219–220 (1985)) (emphasis added). Indeed, this purpose expressly informed the Hay court's decision, discussed above. 360 F.3d at 406 ("An arbitrator's authority over parties that are not contractually bound by the arbitration agreement is strictly limited to that granted by the Federal Arbitration Act"). Interactive Data did not agree to arbitrate any dispute with Petitioners. Thus, the FAA awards them protection against fishing expeditions masquerading as pre-hearing document subpoenas issued by an arbitral forum that was selected by others. To the extent that the California Arbitration Act compels a different result, it directly conflicts with the FAA, and is preempted.[15]

2. The Subpoena is Unenforceable Under California Law.

Even if the Court were to hold that California law applies, California law – including the provisions and case law cited by Petitioners – does not allow arbitrators to issue subpoenas seeking pre-hearing discovery from non-parties in arbitrations such as this. Rather, California arbitration law evinces a clear policy limiting discovery – including non-party discovery – in most arbitrations, except those involving personal injury or wrongful death, or where the parties have expressly agreed otherwise. "As a general rule, the right to discovery is highly restricted in arbitration proceedings." Alexander v. Blue Cross of Cal., 88 Cal. App. 4th 1082, 1088 (2001); accord, e.g., Lambert v. Carneghi, 158 Cal. App. 4th 1120, 1131 (2008) ("California law does not automatically guarantee the right to discovery in arbitration proceedings, except in certain types of cases or unless the parties agree") (citing, *inter alia*, Cal. Civ. Proc. Code §§ 1283.05, 1283.1); accord, e.g., Coast Plaza Doctors Hosp. v. Blue Cross of Cal., 83 Cal. App. 4th 677, 690 (2000) ("Unquestionably, discovery is limited in arbitrations (except in injury or death cases or where the parties have expressly agreed otherwise)"); see also Armendariz v. Found. Health Psychcare Servs., 24 Cal. 4th 83, 106 (2000) ("a limitation on discovery is one important component of the 'simplicity, informality, and expedition of arbitration'") (quoting Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 31 (1991)).

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[15] Volt does not support a different conclusion. While the Volt Court declined to rule that the FAA preempted a CAA provision before the court concerning a stay of arbitration, it clearly based that determination on the parties' express contractual choice of California procedural law to govern their arbitration. See 489 U.S. at 477–79. See also fn. 10, supra. Here, neither the parties to the arbitration provision, nor Interactive Data, made such a choice.

California Code of Civil Procedure Section 1283.05 governs depositions and discovery in arbitration, and contains exceptions to the general rule of limited discovery, but *only in certain types of arbitrations*. See, e.g., Alexander, 88 Cal. App. 4th at 1090–91. Here, Petitioners are mistaken to rely on Section 1283.05 and the case of Berglund v. Arthroscopic & Laser Surgery Ctr. of San Diego, L.P., 44 Cal.4th 528 (2008), which interprets it. Section 1283.05, entitled "Depositions and Discovery", applies *only* when an arbitration agreement either: (1) addresses claims for personal injury/wrongful death or (2) specifically incorporates it by reference. Cal. Civ. Proc. Code § 1283.1(b) ("*Only if the parties by their agreement so provide*, may the provisions of Section 1283.05 be incorporated into, made a part of, or made applicable to" any arbitration agreement for disputes other than those for personal injury or wrongful death) (emphasis added); Miranda v. 21st Century Ins. Co., 117 Cal. App. 4th 913, 925 (2004); Alexander, 88 Cal. App. 4th at 1090. Section 1283.05 was thus only relevant in Berglund, which is quoted at length in Petitioners' Memorandum at page 18, because that case involved a claim for personal injury. See 44 Cal. 4th at 533, 535. This case involves a FINRA securities arbitration, not personal injury or wrongful death claims, and the parties to the arbitration did not incorporate Section 1283.05 into their agreement to arbitrate. McLane Decl. ¶19. Accordingly, neither Section 1283.05 nor Berglund have any relevance here, and they do not provide support for the arbitration panel's issuance of the subpoena.

Petitioners also point to two other provisions of California law, neither of which provide them with support. See Petitioners' Memorandum at 17. Petitioners cite California Court Rule 3.822(a) but that rule is completely inapplicable to this matter. By its own terms Rule 3.822 (and the surrounding rules) applies only to cases falling under the mandatory judicial arbitration system for "small civil cases" set forth in California Code of Civil Procedure §§ 1141.10, et seq. Cal. Ct. Rs. 3.810 & 3.811; Cal. Civ. Proc. Code §§1141.10–1141.12. This is not such a case.

Petitioners are similarly incorrect to invoke the second sentence of California Civil Procedure Code § 1282.6(a). That subsection applies only to arbitration hearings, not to pre-hearing discovery. As discussed above, Section 1283.05 – entitled "Depositions and Discovery" – is the section that governs discovery matters in arbitration, and it is limited to arbitrations of the type that this is decidedly not. In contrast, Section 1282.6 is housed among the sections of the California Arbitration Act addressing arbitration hearings, not pre-hearing discovery, and subsection (a) of Section 1282.6, on which Petitioners rely, provides:

> (a) A subpoena requiring the attendance of witnesses, and a subpoena duces tecum for the production of books, records, documents and other evidence, ***at an arbitration proceeding or deposition under Section 1283 [governing situations where a witness will be unavailable at the hearing],*** **and** ***if Section 1283.05 is applicable, for the purposes of discovery***, shall be issued as provided in this section. In addition, the neutral arbitrator ***upon his own determination*** may issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records, documents and other evidence.

Cal. Civ. Proc. Code § 1282.6(a) (emphasis added). Subsections (b) and (c) of Section 1282.6 address the mechanics for issuing hearing subpoenas when they have been requested by the parties. The second sentence of the subsection (a), quoted above, simply applies to situations where the arbitrator determines, *sua sponte*, that it is necessary to issue a hearing subpoena, in the absence of a request from a party, and makes no mention of an arbitrator's powers with respect to pre-hearing discovery -- those powers are governed exclusively by Section 1283.05. See Brock v. Kaiser Found. Hosps., 10 Cal. App. 4th 1790, 1802 (1992) ("In all other arbitrations [*i.e.* those not involving personal injury/wrongful death claims], the arbitrator may grant discovery '[o]nly if the parties by their agreement so provide … .'") (quoting Cal. Civ. Proc. Code § 1283.1(b)). Indeed, any other interpretation would render the actual discovery provision of the California Arbitration Act – Section 1283.05 – wholly meaningless, and would thwart the general policy in California of limited discovery in arbitration proceedings. This is contrary to California law. See, e.g., Coast Plaza Doctors Hosp., 83 Cal. App. 4th at 690 ("Unquestionably, discovery is limited in arbitrations (except in injury or death cases or where the parties have expressly agreed otherwise)").

Accordingly, even if the Court were to hold that this matter is governed by California law, the subpoena seeking pre-hearing discovery from Interactive Data would be unenforceable.

III. THE ARBITRATION SUBPOENA IS OVERLY BROAD, UNDULY BURDENSOME, AND SEEKS INFORMATION THAT IS IRRELEVANT TO THE CLAIMS AND CAN BE OBTAINED FROM PARTIES TO THE ARBITRATION.

A. The Subpoena's Requests Are Sweeping, Seek Irrelevant Information, and Petitioners Have Advanced No Reasonable Proposals for Narrowing Them.

The Subpoena seeks a vast volume of documents from Interactive Data, directed Interactive Data to respond within two business days of service, and purports to require a production that would be at enormous expense and disruption to Interactive Data's business. See Fed. R. Civ. P. 45(c)(1) ("A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction – which may include lost earnings and reasonable attorney's fees – on a party or attorney who fails to comply.").[16] In addition, many of the requested documents can be obtained from the parties to the arbitration. However, notwithstanding this fact, and the fact that the Subpoena is unenforceable as discussed in Section II, above, Interactive Data engaged in good faith efforts to negotiate a reasonable and more limited production in response to the subpoena's individual requests, when Petitioners for the first time initiated such discussions within the past several weeks. Nevertheless, Petitioners have rejected Interactive Data's proposals for narrowing the subpoena.

Moreover, much of the information requested is irrelevant to the claims or defenses in the arbitration, to which Interactive Data is not a party. Indeed, in the context of subpoenas directing witnesses to bring documents to arbitration hearings, the FAA requires that arbitrators may only issue subpoenas for information "which may be deemed material as evidence in the case." 9 U.S.C. § 7. Accordingly, even if, contrary to law, the Court were to hold that the subpoena is enforceable, as discussed below, it should decline to enforce it on the grounds of overbreadth, undue burden and expense, irrelevance, and immateriality. If the subpoena were styled as a

[16] While the FINRA arbitration is not governed by the Federal Rules of Civil Procedure, non-parties to the arbitration who had no opportunity to object to the Subpoena, such as Interactive Data, should be provided with at least the same protections against undue burden an expense as are provided in the courts.

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hearing subpoena (which it is not) directing Interactive Data to bring documents with it to the late October arbitration hearing, it would be equally unenforceable on these grounds. At a minimum, the Court should enforce the subpoena only to the extent of Interactive Data's reasonable proposals for narrowing the requests.

1. The First Request Seeks An Enormous Volume of Information over a Four-Year Period That is Irrelevant, Proprietary and Would Be Extremely Costly to Produce.

The Subpoena's first request calls for:

> All documents relating to the pricing of "SUBJECT CMOs" on behalf of NFS and/or Brookstreet Securities from January 2004 to September 2007.

As written, responding to this request would cost Interactive Data at least $1.6 million, and would consume least 33,750 hours of work. Lewkowicz Decl. ¶7. After Interactive Data answered and removed the case to this Court, Petitioners for the first time indicated that the request could be limited to 50 CMOs. McLane Decl. ¶9. Petitioners also suggested that they really only were interested in a subset of the 50 CMOs, but refused to identify them absent an agreement on production. Id. In any event, such limitations, whether actual or theoretical, do not resolve the burdens associated with the first request, nor do they change the fact that the information is not relevant.

The first request seeks all of the underlying data and information that Interactive Data considered in determining evaluated pricing information for the subject CMOs over a nearly four-year period. This constitutes a vast amount of electronic and hard copy data, which is not only proprietary, but also irrelevant to the claims and defenses in the arbitration. Taking the issue of burden first, the information in question includes all documents reviewed by PRD evaluators, including market research, trade information, tracking databases and other electronic databases. This is not simply a matter of pushing a button and generating a spreadsheet or some similar repository of data. It would take a substantial amount of time, at substantial cost, to produce the requested documents and information and, in fact, with respect to certain of the underlying data, the limitation to the 50 CMOs would actually make the task more complicated, expensive, and lengthy (consuming approximately 47,000 hours of an evaluator's time). Lewkowicz Decl. ¶7.

Perhaps more importantly, the method and basis for PRD's determination of CMOs' evaluated prices simply do not relate to whether NFS or Brookstreet – the parties to the arbitration – breached a duty to Petitioners by investing their funds in high-risk securities, or misrepresented the prices of those securities. Those are the only issues in the arbitration – there are no claims against Interactive Data, which simply provided evaluated pricing information for the securities at issue. To the extent, as Petitioners contend, that NFS has asserted a defense that it reasonably relied on the evaluations provided by Interactive Data, see Petitioners' Memorandum at 3, the underlying data on which the evaluations were based – which it is undisputed that NFS was not privy to – is entirely irrelevant. In short, the information sought in Request No. 1 would simply not be "material as evidence" in the arbitration, see 9 U.S.C. § 7, under any set of circumstances. This is a classic fishing expedition, and the Court should not allow it.

Despite the foregoing, Interactive Data agreed to produce the only information that is relevant to the arbitration – the evaluated pricing information concerning the CMOs – subject to identification of the subset of CMOs that Petitioners suggested they are truly interested in, and a reasonable limitation on the time period. Petitioners (who have received 35,000 documents relating to pricing from NFS in discovery in the arbitration, see McLane Decl. ¶20) rejected this request.

2. The Second Request is Overbroad, Enormously Burdensome, and Seeks Documents That Are Available From Parties to the Arbitration.

Request No. 2 seeks:

> All documents relating to communications with the Boca Raton office of Brookstreet Securities Corp. (which officed Clifford Popper, amongst others) and/or Brookstreet Securities Corp. concerning Collateralized Mortgage Obligation securities and all documents concerning those securities.

As an initial matter, Brookstreet is a party to the arbitration, and documents responsive to this request are clearly available from it. If Interactive Data, a non-party, were required to respond to this request, which contains no apparent time limitation, it would require, *inter alia*, restoration and review of its employees' e-mail files. The restoration alone would take approximately 22 weeks, and would cost approximately $288,000 (a figure that does not take into account review of those files for responsive information). Lewkowicz Decl. ¶9. Moreover, the request calls for "all documents concerning those securities," which is patently overbroad, unduly burdensome, and irrelevant, for the reasons discussed in connection with the first request, above.

In an attempt to reach an agreement on this request, Interactive Data offered to produce the termination notice to an affiliate of Brookstreet. Ex. I to McLane Decl. While this notice, like the information sought in the remainder of the request, is not relevant to the arbitration, Interactive Data is willing to produce it. Petitioners rejected this compromise, notwithstanding their complaint that they cannot otherwise obtain the termination notice. See Petitioners' Memorandum at 19.

3. A Review of Interactive Data's Legal Files Would Be Time Consuming, Expensive and Would Not Yield Information That Is Relevant to the Arbitration.

Request No. 3 seeks:

> All non-privileged documents in the files of the IDC Legal Department relating to the termination of services to Brookstreet Securities and/or Clifford Popper.

As discussed above, Interactive Data has offered to produce the termination notice, which is responsive to this request. Otherwise, the request would require an extensive review of Interactive Data's legal files to determine if any additional responsive information exists. Such review would be expensive, labor-intensive, and would require a careful privilege review by Interactive Data's in-house and outside attorneys. Lewkowicz Decl. ¶9. Moreover, it is far from clear how such documents would bear on the claims Petitioners have brought against Brookstreet and NFS in the arbitration. Notwithstanding this burden and the lack of materiality, Interactive Data informed Petitioners that it was considering agreeing to this request, as part of a larger agreement with respect to the entire subpoena, the day before Petitioners filed their *ex parte* application with this Court. Ex. I to McLane Decl. Given the fact that this information is wholly irrelevant, however, the Court should not enforce this request.

4. The Documents Sought in Request No. 4 Have Been Produced By NFS and, In Any Event, Interactive Data Has Also Offered to Produce Them.

Request No. 4 seeks:

> All contracts with NFS relating to IDC pricing services which cover Collateralized Mortgage Obligations, Mortgage Backed Securities and/or derivatives thereof in force and effect from January 1, 2007 to date.

Contracts between Interactive Data and NFS do not relate to the claims in the arbitration – indeed, such contracts bear no relationship to the issues of misrepresentation and breach of duties to Petitioners by NFS and Brookstreet. Regardless, however, Interactive Data understands that NFS has already produced the subject contracts to Petitioners. McLane Decl. ¶20. Moreover, to the extent that there is some reason to obtain duplicates from Interactive Data, Interactive Data has agreed to produce them as part of a proposed agreement for narrowing the subpoena's scope. Ex. I to McLane Decl.

5. The Documents Sought in Request No. 5 are Available From Brookstreet, but Interactive Data Has Offered to Produce Them.

Request Number 5 seeks:

> All contracts with Brookstreet Securities relating to IDC pricing services for Collateralized Mortgage Obligation Securities, Mortgage Backed Securities and/or derivatives thereof in force and effect from January 1, 2004 to date.

This request is infirm for reasons similar to those concerning Request No. 4, as the documents requested are not relevant to the claims, and they are available from Brookstreet, a party to the arbitration. In any event, however, as with Request No. 4, Respondents have agreed to produce any responsive documents as part of a larger agreement for narrowing the subpoena's scope. Ex. I to McLane Decl.

6. Request Number 6 Seeks Irrelevant Information, and Petitioners Already Have Documents That Satisfy the Request.

Request No. 6 calls for:

> All documents reflecting payments received by IDC from NFS and/or Brookstreet Securities and/or Clifford Popper during the period January 1, 2004 through September 2007 which includes compensation in whole or in part for pricing the subject CMOs.

The contracts that Interactive Data offered to produce in response to Request Number 4 – and which Petitioners have already received – satisfy this request. There is no basis for compelling Interactive Data to produce underlying invoices or similar documentation, as that information is not relevant (and, indeed, none of the information sought in this request is material to Petitioners' claims against NFS and Brookstreet, as the amount of money that Interactive Data charged NFS bears no relationship whatsoever to the claims in the arbitration. Notably, Petitioners have yet to provide an explanation of the request's relevance).

Any response beyond producing the contracts that Petitioners already have would also impose a substantial burden on Interactive Data. Interactive Data's documents reflecting billing and payments are saved in hard copies and archived, necessitating the identification of responsive account numbers and the archived boxes containing their information. Lewkowicz Decl. ¶9. Review of the boxes would take, at a minimum, several weeks. Id. Finally, as with the contracts themselves, the majority of the documents encompassed by this request are available from NFS, a party to the arbitration.

7. The Seventh Request is Excessively Broad and Would Subject Interactive Data to Enormous Burden and Expense.

Request No. 7 seeks:

> All documents relating to contacts, investigations, and/or interviews of sources by IDC for the purpose of obtaining information utilized in pricing the subject CMOs, including but not limited to handwritten notes, reports and correspondence. (To assist in your search, attached is the October 29, 2004 correspondence concerning IDC communication with John Caporuscio. IDC may also have contacted Robert Pedretti, Michael Wienckowski, and Joseph Valentine.).

Request Number 7 suffers from the same infirmities as Request No. 1, as it seeks underlying data and information that is not relevant to the claims in the arbitration, that is proprietary, and that would subject Interactive Data to an unduly time consuming, disruptive, and expensive review and production. Notwithstanding these infirmities, Interactive Data offered, as part of a proposed agreement for narrowing the subpoena, to produce e-mail communications with the four individuals named in the request. While this does not solve the relevance problem, it was a reasonable compromise designed to provide Petitioners with the particular correspondence specifically identified in the request. In the August 19, 2008 telephone call between Petitioners' counsel and Interactive Data's counsel, Petitioners' counsel indicated that they might be amenable to this reasonable limitation, but no agreement has been reached. McLane Decl. ¶9.

8. The Eighth Request Constitutes Nothing More Than An Onerous and Expensive Fishing Expedition.

Request No. 8 seeks:

> All correspondence relating to Brookstreet Securities and/or Clifford Popper, including but not limited to correspondence with NFS, Fidelity Investments, FMR Corporation, the United States Securities and Exchange Commission, the NASD, FINRA and all other industry and governmental agencies, limited to the period January 2004 through September 2007.

Request Number 8 is unduly burdensome and unnecessary, as many of the communications sought are clearly available from NFS, as a party to the arbitration. With respect to communications with regulators, to the extent that Petitioners would even be entitled to them, they can be obtained through a FOIA request and, as such, a non-party to the arbitration should not be compelled to produce them. See COMSAT, 190 F.3d at 276-77 (holding that where a party can obtain responsive documents through a FOIA request, a non-party to an arbitration should not be compelled to produce them). Moreover, the request is clearly designed as a fishing expedition, seeking to dredge up information that has little, if any, relationship to whether Brookstreet and NFS breached duties to Petitioners. Finally, production in response to the request would, among other things, require the restoration of e-mail files at considerable time and expense, as discussed above. Lewkowicz Decl. ¶9.

B. The Subpoena Imposed an Unreasonably Short Response Time of Two Business Days.

The subpoena imposed a return date within two business days of service. This was wholly unreasonable, give the vast amount of documents requested. This, in and of itself, provides a sufficient basis to decline enforcement.

C. If the Court is Inclined to Enforce the Subpoena, it Should Order Petitioners to Pay the Costs Associated Therewith.

Given the volume of documents that Petitioners seek by way of the subpoena, any order of production should be conditioned upon Petitioners bearing the costs thereof. See Fed. R. Civ. P. 45(c)(1) ("A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction – which may include lost earnings and reasonable attorney's fees – on a party or attorney who fails to comply."). Interactive Data is not a party to the arbitration, and the subpoena asks it to disrupt its business, and spend a considerable amount of money in doing so, in order to produce documents the vast majority of which have no relationship to the claims and defenses at issue. In these circumstances, any order of production should be conditioned upon Petitioners paying the costs associated therewith.

IV. DISCOVERY REGARDING THE BURDENS ASSOCIATED WITH PRODUCTION IS UNNECESSARY, AND SHOULD NOT BE PERMITTED.

Petitioners request, in the alternative, an order that they be permitted to take the deposition of a representative of Interactive Data regarding the burdens associated with production in response to the subpoena. Given Petitioners' purported claim of urgency precipitating their request for a decision on the merits of this action on an *ex parte* basis, such a deposition would not serve any legitimate purpose, particularly where Interactive Data has already provided detailed information regarding the burdens and expense of production, and offered reasonable proposals to resolve the dispute. Moreover, there is a substantial risk that Petitioners would seek to use any such deposition to further the fishing expedition of which the subpoena is a part. However, the only relevant issue in this case is whether the subpoena is enforceable, and whether it is unduly broad and burdensome. A deposition regarding those issues is wholly unnecessary.

If, however, the Court is inclined to order that such a deposition take place, fairness dictates that Interactive Data be permitted to take a deposition of the person most knowledgeable regarding the documents Petitioners have received from the parties to the arbitration, and to determine the relevance and materiality of the documents Petitioners contend they have been unable to obtain.

V. CONCLUSION

For the foregoing reasons, Respondents IDCO and PRD respectfully request that the Court DENY Petitioners' Application for *ex parte* relief.

RESPONDENTS RESPECTFULLY REQUEST THE OPPORTUNITY FOR A HEARING ON THE MATTERS SET FORTH HEREIN.

Dated: September 4, 2008

McDERMOTT WILL & EMERY LLP

By: /s/ Joshua P. Kweller
Joshua P. Kweller (SBN 254834)
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Interactive Data Corp. and Interactive Data Pricing and Reference Data, Inc.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DODGER, INC.; GOLD, INC.; BORUJ, INC.; and SALOMON HELFON TUACHI,

Petitioners,

v.

INTERACTIVE DATA CORP.; INTERACTIVE DATA PRICING AND REFERENCE DATA, INC.; and DOES 1 through 10, Inclusive,

Respondents.

CASE NO. 08-CV-1476-JM-POR

DECLARATION OF LAURA MCLANE IN SUPPORT OF INTERACTIVE DATA CORP. AND INTERACTIVE DATA PRICING AND REFERENCE DATA, INC.'S OPPOSITION TO *EX PARTE* APPLICATION FOR ORDER ENFORCING FINRA SUBPOENA

I, Laura McLane, declare from my own personal knowledge or understanding as follows:

1. I am an attorney and a Partner in the law firm of McDermott Will & Emery LLP ("McDermott"), counsel to the Respondents, Interactive Data Corp. ("IDCO") and Interactive Data Pricing and Reference Data, Inc. ("PRD") (collectively, "Interactive Data").

2. I am licensed to practice in the Commonwealth of Massachusetts, and my Board of Bar

Overseers Number is 644573. I have been admitted *pro hac vice* to practice before this Court in connection with this action. I submit this Declaration in support of Interactive Data's Opposition to Petitioners' *Ex Parte* Application for Order Enforcing FINRA Subpoena or, in the Alternative, Setting a Hearing at the Earliest Possible Date with Leave to Conduct Discovery (the "Application").

3. Exhibit A to this Declaration is a true and accurate copy of the Subpoena to Interactive Data Corporation that is the subject of this action. Interactive Data was served with the subpoena on May 16, 2008.

4. Exhibit B to this Declaration is a true and accurate copy of the Declaration of Sigal Lewkowicz (the "Lewkowicz Declaration"), setting forth the enormous burden and expense of responding to the subject subpoena. The Lewkowicz Declaration was previously filed by Interactive Data in support of its submissions removing this action to this Court.

5. Exhibit C to this Declaration is a true and accurate copy of a May 20, 2008 letter from my Partner, Mark Pearlstein, to Bradd Milove, counsel for Petitioners, informing him that the subpoena is unenforceable because it seeks pre-hearing discovery from a non-party in violation of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 7; it is unreasonably overbroad and enormously burdensome; and it imposed an unreasonably short return date for production within two business days after service.

6. Exhibit D to this Declaration is a true and accurate copy of a June 3, 2008 letter from Brian Miller, counsel for Petitioners, to Mark Pearlstein, seeking further information regarding the burdens that production would impose on Interactive Data.

7. Exhibit E to this Declaration is a true and accurate copy of a June 10, 2008 letter from Mark Pearlstein to Brian Miller, responding in detail to Mr. Miller's request for information regarding the burden that production in response to the subpoena would impose on Interactive Data.

8. Petitioners' counsel did not initiate any discussions with counsel for Interactive Data for the purpose of narrowing the scope of the subpoena's sweeping requests, or otherwise seek to reach an agreement concerning production, upon receipt of the foregoing June 10, 2008 letter or

at any time before initiating the instant action. Indeed, Petitioners' counsel first initiated such discussions after Interactive Data filed its answer and removed the case to this Court on August 13, 2008. Exhibit F to this Declaration is a true and accurate copy of an August 15, 2008 letter from Brian Miller to my co-counsel, Thomas Ryan, Joshua Kweller, and Brandon Roker, seeking to initiate discussions regarding narrowing the scope of the subpoena's requests.

9. On August 19, 2008, I participated in a telephone conference with Brian Miller and his colleague, Christopher Hayes. In that call, we discussed possibilities for narrowing the subpoena's scope. For example, Mr. Miller suggested a potential willingness to limit the scope of Request No. 7 to e-mail communications with the four individuals identified in the request, but no agreement was reached during the call. Mr. Miller also suggested for the first time that Request No. 1 could be limited to the 50 CMOs specifically identified in the subpoena and, further, that Petitioners really only were interested in a subset of those 50 CMOs. However, he refused to identify the subset absent an agreement on production. On August 21, 2008, I participated in a follow-up telephone conference with Christopher Hayes. Mr. Miller was unavailable, and Mr. Hayes informed me that while he would listen to any proposals or comments that I had, he could not make any decisions, and would relay the substance of our call to Mr. Miller. My colleague, Joshua Kweller, also participated in both the August 19 and August 21, 2008 telephone conferences.

10. In addition to discussions regarding the possible narrowing of the subpoena's requests, in the above telephone conferences with Petitioners' counsel, I asked them questions about the requests, including whether responsive documents had already been received from the parties to the arbitration and, as to certain of the requests, what their relevance was to the claims and defenses in the arbitration. I did not receive responses to my questions.

11. In the August 21, 2008 call, I also informed Mr. Hayes that the person at Interactive Data with the most knowledge of the documents and burdens associated with the subpoena, Sigal Lewkowicz, was out of the country (on vacation in Israel) until Labor Day, and that we therefore could not reach a definitive agreement until after that date. However, I also indicated that we were willing to continue negotiations regarding reaching an agreement in the interim, with the

McDermott Will & Emery LLP
Attorneys At Law
Los Angeles

hope that such an agreement could be reached shortly after Labor Day.

12. Exhibit G to this Declaration is a true and accurate copy of an August 22, 2008 letter from me to Mr. Hayes, memorializing our August 21, 2008 telephone conference.

13. Exhibit H to this Declaration is a true and accurate copy of an August 22, 2008 letter from Mr. Hayes to me, stating that Petitioners could not wait until Labor Day to reach an agreement on production, and further indicating that if no agreement were reached by August 25, 2008, Petitioners would ask the Court to resolve the matter on an expedited basis.

14. Exhibit I to this Declaration is a true and accurate copy of an August 25, 2008 letter from me to Mr. Miller and Mr. Hayes, setting forth a proposed agreement for production on a narrowed basis. Interactive Data engaged in substantial, good faith efforts to prepare the proposal (efforts which included several conference calls with Ms. Lewkowicz on vacation in Israel), in order to accommodate Petitioners' purported August 25 deadline, as set forth in Mr. Hayes' August 22, 2008 letter to me.

15. Rather than responding to my August 25, 2008 letter, Petitioners filed the Application now pending before the Court on August 26, 2008 on an *ex parte* basis. Counsel for Petitioners claimed that they did not receive my August 25, 2008 letter by facsimile, although the fax confirmation sheet (contained in Exhibit I hereto) shows that it was successfully transmitted at 15:57 pm. Eastern time (12:57 Pacific time), on August 25.

16. Exhibit J to this Declaration is a true and accurate copy of an August 28, 2008 letter from Brian Miller to me, responding to my August 25, 2008 letter. Mr. Miller's letter, in substance, rejected Interactive Data's proposed agreement regarding a narrowed production.

17. Exhibit K to this Declaration is a true and accurate copy of several pages from FINRA's website, incorporating the provisions of the FAA.

18. Exhibit L to this Declaration is a true and accurate copy of a Supplemental Declaration of Sigal Lewkowicz dated September 3, 2008.

19. While I do not have a copy of, and have not seen, the agreements among the parties to the arbitration, I have been informed by counsel for NFS that those agreements select Massachusetts law to govern aspects of the parties' relationship. I further understand that such agreements do

not select or incorporate the provisions of California law.

20. I have also been informed that NFS has produced approximately 35,000 documents relating to pricing, as well as the agreements between NFS and PRD, among other documents that are the subject of the subpoena to Interactive Data.

I declare under the penalty of perjury pursuant to the laws of the United States of America and the Commonwealth of Massachusetts that the foregoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on September 4, 2008, in Boston, Massachusetts.

Laura McLane

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DODGER, INC.; GOLD, INC.; BORUJ, INC.; and SALOMON HELFON TUACHI,

Petitioners,

v.

INTERACTIVE DATA CORP.; INTERACTIVE DATA PRICING AND REFERENCE DATA, INC.; and DOES 1 through 10, Inclusive,

Respondents.

CASE NO. 08-CV-1476-JM-POR

INDEX OF EXHIBITS TO THE DECLARATION OF LAURA MCLANE IN SUPPORT OF INTERACTIVE DATA CORP. AND INTERACTIVE DATA PRICING AND REFERENCE DATA, INC.'S OPPOSITION TO *EX PARTE* APPLICATION FOR ORDER ENFORCING FINRA SUBPOENA

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McDERMOTT WILL & EMERY LLP
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LOS ANGELES

EXHIBIT A

D

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FINANCIAL INDUSTRY REGULATORY AUTHORITY

ARBITRATION PROCEEDING

In the matter of the Arbitration Between DODGER INC., Claimant, v. BROOKSTREET SECURITIES CORPORATION; NATIONAL FINANCIAL SERVICES LLC; FIDELITY INVESTMENTS COMPANY; ARIEH MANOR; STANLEY BROOKS; and CLIFFORD POPPER Respondents.	CONSOLIDATED FINRA CASES 07-02185 and 07-02060 SUBPOENA TO INTERACTIVE DATA CORPORATION 19200 Von Karman Ave. Irvine, CA 92612
In the matter of the Arbitration between GOLD, INC; BORUJ, INC; and SALOMON HELFON TUACHI, Claimants, v. BROOKSTREET SECURITIES CORPORATION; NATIONAL FINANCIAL SERVICES LLC; FIDELITY INVESTMENTS COMPANY; ARIEH MANOR; STANLEY BROOKS; and CLIFFORD POPPER Respondents.	

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TO: INTERACTIVE DATA CORPORATION
19200 Von Karman Ave.
Irvine, CA 92612

1. YOU ARE ORDERED TO PRODUCE THE RECORDS described in item 3 as follows: by delivering a true, legible, and durable copy of the records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an other envelope or wrapper, sealed, and mailed to the attorney at the address stated below:

Attorneys:	Bradd L. Milove, Esq.
Date:	May 20, 2008
Time:	10:00 A.M.
Address:	MILLER & MILOVE 7825 Fay Avenue, Suite 200 La Jolla, CA 92037

2 The records are to be produced by the date and time show in item 1.

3. The records to be produced are described as follows:

SEE ATTACHMENT "A"

FINRA DISPUTE RESOLUTION

DATE ISSUED: 4-25-08

James H. Bowersox
James H. Bowersox
Arbitration Chairman

MILLER & MILOVE
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ATTACHMENT A

DOCUMENTS TO BE PRODUCED BY INTERACTIVE DATA CORPORATION

DEFINITIONS:

A. For the purposes of this Subpoena, the term "INTERACTIVE DATA CORPORATION" shall mean and include Interactive Data Corporation (NYSE stock symbol "IDC," headquarters in Bedford, Massachusetts) and any and all subsidiaries and operating divisions, including but not limited to FT Interactive Data, Interactive Data Pricing and Reference Data, Inc , Interactive Data Real-Time Services, Inc. (headquarters in White Plains, New York), Interactive Data Fixed, Income Analytics (headquarters in Los Angeles, California) and eSignal

B The term "INTERACTIVE DATA CORPORATION" or "IDC" shall also mean and include all of its employees, including but not limited to Lauren Luther (Supervisor), Jeff D'Arcy (Supervisor CS WEST, Interactive Data), Karen Martell, Gina Mastro, Ricardo Nichols, Kurt Schilling, Stephen Rappaport, David Levy, Liz Abela, Elaine Sepe, Mathew Brodin, Mike Foley, Sean O'Conner, CS East, Leah Wesemann, Sean McDonald, Emily Sloane and the Legal Department.

C The term "BROOKSTREET SECURITIES" shall mean and include Brookstreet Securities Corporation, its officers, directors, attorneys, agents and employees

D The term "BROOKSTREET SECURITIES" shall also mean and include all employees of Brookstreet Securities including but not limited to Clifford Popper, Stephanie Dow, Melissa Adorno, Stanley Brooks, Scott Brooks, James Caprio, Troy Gagliardi and Tim Swanson

E. The term "NFS" shall mean and include National Financial Services, LLC, a Fidelity Investments Company The term "NFS" shall also include all officers, directors, attorneys and agents of NFS The term "NFS" shall also include all employees of NFS, including but not limited to Nancy Novak, Chris Robinson, Patricia Cook, Browning Mank, Andy Glenn, Ryan Potter, any and all other employees of NFS including the NFS Legal Department, NFS Credit Department, NFS Risk Department and NFS Compliance Department

F. The term "DOCUMENT" or "DOCUMENTS" as used herein shall mean and include any kind of written, typewritten, printed, electronic or recorded material whatsoever, including, without limitation, records, books, internal or office memoranda, e-mails, facsimiles, writings, notes, hard drives, recordings of any nature, photographs, drawings, charts, tapes, computer disks, letters and other correspondence, financial statements, reports and prospectuses, working papers, tape recordings, desk calendars, appointment books, daily calendars or schedules, copies and/or other tangible things, extracts, or summary of other documents, and drafts of any of the above, whether used or not, including all originals, copies and any other form of reproduction

G The term "COMMUNICATIONS" and "CORRESPONDENCE" as used herein shall be deemed to mean any and all communications and correspondence of any kind, whether oral or written, including, without limitation, letters, correspondence, notes, transcriptions, face-to-face meetings, telephone conversations, e-mails, facsimile transmissions, tape recordings, computer transmissions of any type, etc

H Files to be searched. To assist IDC in responding to this subpoena, the files of the following individuals may contain responsive documents Lauren Luther (Supervisor), Jeff D'Arcy (Supervisor CSWEST, Interactive Data), Karen Martell, Ricky Nichols, Kurt Schilling, Mathew Brodin, Stephen Rappaport, Liz Abela, David Levy, Elaine Sepe, CS East, Mike Foley, Sean O'Conner, Gina Maestro, Leah Wesemann and the IDC Legal Department

J. "SUBJECT CMOs" shall mean Collateralized Mortgage Obligations, derivatives and other all other securities appearing in client accounts including:

		CUSIP
1	FEDL NATL MTG ASSN SER 2006-5 CL N1 0.000% 08/25/2034 GTD REMIC PASS THRU CTF CPN PMT MONTHLY	31394VL81
2	FEDL NATL MTG ASSN SER 2006-5 CL N2 0.009% 02/25/2035 GTD REMIC PASS THRU CTF CPN PMT MONTHLY	31394VL99
3.	GSMPS MTG LN TRUST SER 2005-RP3 CL 1AS 2 055% 09/25/2035 MOODY'S Aaa / S&P AAA CPN PMT MONTHLY	362341LM9

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4.	GSR MTG LOAN TRUST SER 2005-8F CL 5A2 0.000% 11/25/2035 INV FLTR S&P AAA CPN PMT MONTHLY	362341WG0
5.	MERRILL LYNCH MTG SER 2002-AFC-1 CL BF1 7.92% 09/25/2032 MOODY'S Baa2 / S&P BB CPN PMT MONTHLY	589929YA0
6	FEDL HOME LN MTG CRP SER 2836 CL SG 3.383% 05/15/2034 MULTICLASS PARTN CTF GTD FLTG RT CPN PMT MONTHLY	31395FCK8
7.	STRUCTURED ASSET SEC SER 2005-RF3 CL1AIO 2.043% 06/25/2035 MOODY'S Aaa /S&P AAA CPN PMT MONTHLY	86359DMD6
8.	RESIDENTIAL ASSET SER 2004-A9 CL A3 0.000% 12/25/2034 INV FLTR S&P AAA CPN PMT MONTHLY	45660N5T8
9	FEDL HOME LN MTG CRP SER 2990 CL LM 0.000% 10/15/2034 MULTICLASS MTG PARTN CTFS GTD FLTR INV CPN PMT MONTHLY	31395V3J6
10	GSR MTG LN TR SER 2005-1F CL 4A2 0.000% 01/25/2035 VAR RATE S&P AAA CPN PMT MONTHLY	36242DVL4
11	FEDL HOME LN MTG CRP SER 2990 CL WK 0.000% 06/15/2035 MULTICLASS MTG PARTN CTFS GTD FLTR INV CPN PMT MONTHLY	31395V4T3
12.	FEDL NATL MTG ASSN SER 2007-7 CL ES 1.080% 02/25/2037 GTD REMIC PASS THRU CTF INV FLTR CPN PMT MONTHLY	31396PSZ5
13	FEDL HOME LN MTG CRP SER 2611 CL XM INV FLTR 05/15/2033 MULTICLASS MTG PARTN CTFS GTD CPN PMT MONTHLY	31393QY89

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14	STRUCTURED ASSET SEC SER 2005-14 CL 1A7 0 000% 07/25/2035 INV FLTR MOODY'S Aaa /S&P AAA CPN PMT MONTHLY	86359DJS7
15.	FEDL HOME LN MTG CRP SER 3267 CL SP 1.180% 11/15/2036 MULTICLASS PARTN CTF GTD INV FLTR CPN PMT MONTHLY	31397ERJ6
16.	FEDL HOME LN MTG CRP SER 3206 CL ES 1.230% 08/15/2036 MULTICLASS PARTN CTF GTD VAR RATE CPN PMT MONTHLY	31397A6H1
17.	MASTER ASSET SEC TR SER 2005-1 CL 30AX 5.500% 05/25/2035 S&P AAA CPN PMT MONTHLY	57643MKQ6
18	FEDL NATL MTG ASSN SER 2006-61 CL SD 7 160% 07/25/2036 GTD REMIC PASS THRU CTF CPN PMT MONTHLY	31395N4T1
19	FEDL HOME LN MTG CRP SER 2648 CL BS INV FLTR 07/15/2033 MULTICLASS MTG PARTN CTFS GTD CPN PMT MONTHLY	31394G5D1
20	FEDL HOME LN MTG CRP SER 2976 CL DT 0 000% 10/15/2034 MULTICLASS MTG PARTN CTFS GTD INV FLTR CPN PMT MONTHLY	31395U2N0
21	GSR MTG LOAN TRUST SER 2005-5F CL 4A2 0.000% 06/25/2035 INV FLTR MOODY'S Aaa /S&P AAA CPN PMT MONTHLY	36242D6Y4
22	FEDL HOME LN MTG CRP SER 2590 CL DS 25.210% 05/15/2031 MULTICLASS PARTN CTF GTD FLTG RT CPN PMT MONTHLY	31393NFC8
23.	FEDL HOME LN MTG CRP SER 2643 CL SA 0.000% 03/15/2032 MULTICLASS MTG PARTN CTFS GTD INV FLTR CPN PMT MONTHLY	31393WDL0

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24.	CS FIRST BOSTON MTG SER 2003-AR12 3XA1 0.000% 04/25/2033 VAR RT MOODY'S Aaa /S&P AAA CPN PMT MONTHLY	22541N5B1
25.	GOVT NATL MTG ASSN SER 2003-60 CL IK 5.500% 05/16/2033 REMIC PASS THRU CTFS GTD CPN PMT MONTHLY	38374BKW2
26.	GOVT NATL MTG ASSN SER 2003-98 CL IK 5.000% 11/20/2033 REMIC PASS THRU CTFS GTD CPN PMT MONTHLY	38374EVC8
27.	FEDL HOME LM MTG CRP SER 2955 CL PS 0.000% 03/15/2035 MULTICLASS MTG PARTN CTFS GTD INV FLTR CPN PMT MONTHLY	31395PC59
28.	FEDL NATL MTG ASSN SER 2005-44 CL DI 6 250% 03/25/2035 GTD REMIC PASS THRU CTF CPN PMT MONTHLY	31394DPZ7
29.	MASTER ASSET SEC TR SER 2005-1 CL 30AX 5 500% 05/25/2035 S&P AAA CPN PMT MONTHLY	57643MKQ6
30	FEDL NATL MTG ASSN TR 1991-G14 CI 1 8.50% 06/25/2021 GTD REMIC PASS THRU CTFS CPN PMT MONTHLY	31358G399
31	STRUCTURED ASSET SEC SER 2005-RF2 CL AI0 3 253% 04/25/2035 FLTG MOODY'S Aaa/ S&P AAA CPN PMT MONTHLY	86359DEY9
32.	FEDL NATL MTG ASSN SER 2005-14 CL SM 0.000% 08/25/2035 MULTICLASS MTG PARTN CTFS GTD INV FLTR CPN PMT MONTHLY	86359DJS7
33	FEDERAL HOME LN BKS RANGE BD FLT 10.500% 01/16/2019	3133X36P3
34	FEDERAL HOME LN BKS RANGE BD FLT 0.000% 07/02/2015	31339XQX5

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35	FEDL NATL MTG ASSN TR 1991-G14 CL L 8.50% 06/25/2021 GTD REMIC PASS THRU CTFS	
36.	GSR MTG LN TRUST SER 2004-2F CL 3A2 6.500% 01/25/2034 S&P AAA CPN PMT MONTHLY	36229RLB3
37	GOVT NATL MTG ASSN SER 2006-17 CL SP 10.000% 09/20/2035 REMIC PASS THRU CTFS GTD INV FLTR CPN PMT MONTHLY	38374MU72
38	FEDL HOME LN MTG CRP SER 3019 CL IO 5.500% 04/15/2035 MULTICLASS PARTN CTF GTD	31395XV51
39.	FEDL NATL MTG ASSN SER 2007-7 CL ES 1,080% 02/25/2037 GTD REMIC PASS THRU CTF INV FLTR CPN PMT MONTHLY	31396P2Z5
40.	GOVT NATL MTG ASSN SER 2004-30 CL PS 0.000% 04/20/2034 REMIC PASS THRU CTFS GTD INV FLTR CPN PMT MONTHLY	38374F6LJ
41	RBSGC MTG PASS THRU SER 2005-A CL X 6.000% 04/25/2035 MOODY'S Aaa/ S&P AAA CPN PMT MONTHLY	74927UBC1
42	FEDL NATL MTG ASSN SER 2006-56 CL TE 9.000% 07/25/2036 GTD REMIC PASS THRU CTF INV FLTR CPN PMT MONTHLY	31395NZB6
43	FEDL HONE LN MTG CRP SER 3069 CL SW 5.158% 11/15/2035 MULTICLASS PARTN CTF GTD CPN PMT MONTHLY	31396FDG5
44	FEDL NATL MTG ASSN SER 2006-45 CL ST 9.000% 06/25/2036 GTD REMIC PASS THRU CTF FTG CPN PMT MONTHLY	31395NER4
45	FEDL NATL MTG ASSN SER 2005-123 CL SE 7.365 07/25/2034 GTD REMIC PASS THRU CTF INV FLTR	31394VNK2
46	FEDL HOME LN MTG CRP SER 3092 CL TA 7.250% 11/15/2035 MULTICLASS PARTN CTF GTD INV FLTR	31396FUE1

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47	BANC OF AMERICA SER 2007-2 CL 3010 6.000% 03/25/2037 FUNDING CORPORATION MOODY'S Aaa/ S&P AAA CPN PMT MONTHLY	05951GCJ9
48	FEDERAL HOME LN BKS RANGE BD FLT 10.250% 04/16/2019	3133X5KG2
49	GOVT NATL MTG ASSN POOL #183775 9.50% 10/15/2016 CPN PMT MONTHLY	362165CL4
50	FEDL NATL MTG ASSN TR 1989-35 CL 35-G 9.50% 07/25/2019 GTD REMIC PASS THRU CTF CPN PMT MONTHLY	313602VN1

DOCUMENTS TO BE PRODUCED

1. All documents relating to the pricing of "SUBJECT CMOs" on behalf of NFS and/or Brookstreet Securities from January 2004 through September 2007

2. All documents relating to communications with the Boca Raton office of Brookstreet Securities Corp (which officed Clifford Popper, amongst others) and/or Brookstreet Securities Corp concerning Collateralized Mortgage Obligation securities and all documents concerning those securities.

3. All non-privileged documents in the files of the IDC Legal Department relating to the termination of services to Brookstreet Securities and/or Clifford Popper

4. All contracts with NFS relating to IDC pricing services which cover Collateralized Mortgage Obligations, Mortgage Backed Securities and/or derivatives thereof in force and effect from January 1, 2004 to date

5. All contracts with Brookstreet Securities relating to IDC pricing services for Collateralized Mortgage Obligation Securities, Mortgage Backed Securities and/or derivatives thereof in force and effect from January 1, 2004 to date

6. All documents reflecting payments received by IDC from NFS and/or Brookstreet Securities and/or Clifford Popper during the period January 1, 2004 through September 2007 which includes compensation in whole or in part for pricing the Subject CMOs

7. All documents relating to contacts, investigations and/or interviews of sources by IDC for the purpose of obtaining information utilized in pricing the Subject CMOs, including but not limited to handwritten notes, reports, records and correspondence (To assist in your search, attached is the October 29, 2004 correspondence concerning IDC communication with John Caporuscio IDC may have also contacted Robert Pedretti, Michael Wienckowski and Joseph Valentine.)

8 All correspondence relating to Brookstreet Securities and/or Clifford Popper; including but not limited to correspondence with NFS, Fidelity Investments, FMR Corporation, the United States Securities and Exchange Commission, the NASD, FINRA and all other industry and governmental agencies, LIMITED TO THE PERIOD JANUARY 2004 THROUGH SEPTEMBER 2007.

~~9. All documents relating to the Subject CMOs.~~ delete

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c07004033.sub

EXHIBIT B

DECLARATION OF SIGAL LEWKOWICZ

I, Sigal Lewkowicz, declare and state as follows:

1. I am a Senior Attorney for INTERACTIVE DATA CORP. ("IDCO") and INTERACTIVE DATA PRICING AND REFERENCE DATA, INC. ("PRD").

2. I have personal knowledge of the information set forth herein or obtained it from sources within IDCO and PRD believed to be reliable.

3. IDCO is a global provider of financial market data, analytics and related services to financial institutions, active traders and individual investors. Its businesses supply real-time market data, pricing, evaluations and reference data for millions of securities traded around the world, including hard-to-value instruments.

4. PRD, a subsidiary of Respondent IDCO, is a source to the institutional investment community for market data and financial information. It collects, edits, maintains, and delivers data on more than 6 million securities, including daily evaluations for approximately 2.5 million fixed income and international equity issues.

5. IDCO and PRD are Delaware corporations with principal places of business in Bedford, Massachusetts.

6. On April 25, 2008, a subpoena was issued to IDCO and PRD in aid of a FINRA arbitration to which neither IDCO nor PRD are parties. IDCO and PRD have objected to the subpoena on a number of grounds, including the following: The subpoena is unenforceable, as it seeks pre-hearing discovery from a non-party in aid of a FINRA arbitration governed by the Federal Arbitration Act, 9 U.S.C. § 7; the subpoena provided IDCO with an unreasonably short time (two business days after service) to produce documents in response thereto; and the subpoena is vastly overbroad and would impose an undue burden and expense on IDCO and PRD. Indeed, the subpoena seeks a vast volume of documents from IDCO and PRD and, as set forth in more detail below, producing documents in response to the subpoena

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Attorneys At Law
Los Angeles

would cost IDCO and PRD in excess of $1.6 million.

7. First, the subpoena's definitions are sweeping. For example, the definition of "Interactive Data Corporation" or "IDCO" purports to include several businesses that have no connection whatsoever to this matter, as well as their employees. The only entity that produces the subject evaluations is PRD. The definition of "Subject CMOs" in the subpoena is also enormously overbroad, as it calls for "Collateralized Mortgage Obligations, derivatives and . . . all other securities appearing in client accounts including [the 50 items specifically listed]." The PRD subsidiary of Interactive Data evaluates approximately 1.2 million mortgage related securities, out of which approximately 135,000 are CMOs. In addition, the definition includes derivatives, which is a very broad term that encompasses many types of fixed income and equity instruments. Moreover, as the definition also includes "all other securities appearing in client accounts," it purports to encompass the full universe of the more than 6 million securities that PRD covers.

8. The document requests themselves, which are informed by the subpoena's sweeping definitions, are also enormously and unreasonably broad. Responding to them would be extremely costly and would require substantial and enormously disruptive effort on the part of IDCO's and PRD's employees and attorneys. For example, responding to the first request, which calls for "[a]ll documents *relating to*[1] the pricing of the 'SUBJECT CMOs' on behalf of NFS and/or Brookstreet Securities from January 2004 through September 2007," would consume an enormous amount of time, at significant expense. NFS receives a full universe file of CMOs on a daily basis, and IDCO and PRD are not privy to information regarding which securities are held by NFS' clients. Accordingly, providing responsive data regarding the CMO universe would require the search

[1] Emphasis added.

McDermott Will & Emery LLP
Attorneys at Law
Los Angeles

Exh. B, p. 93

EXHIBIT B12

and review of the following types of databases and sources of information:

- The tracking query database: In order to research a specific security identifier and its relationship to a client, an estimated 15 minutes would need to be spent per identifier to produce the available information. Therefore, to research the full universe of CMOs, approximately 33,750 hours would be required. Moreover, in order to perform the search in a comprehensive and accurate manner, it would have to be performed by a customer service manager. Based on these assumptions and further assuming an hourly rate of approximately $50 (multiplied by the approximately 33,750 hours it would take to perform the search), the resulting cost would be approximately $1,687,500.00. Moreover, due to confidentiality considerations, additional time would be required in order to ensure that documents do not contain records of communications with NFS that relate to NFS clients other than Brookstreet.

- EVS Data: This data consists of documents reviewed by evaluators, including market research, trade information, and similar data. The cost of providing this data would vary depending on whether the request is construed to encompass the full universe of CMOs, or is limited to the 50 CMOs explicitly listed in the subpoena. If the full universe of CMOs is considered, it would take a data collection employee approximately one month to complete the job. If the request were limited to the 50 CMOs, the cost would actually be higher because it would require an evaluator to review each security for each day that an evaluation was generated, and identify the relevant information for each such security on each day. This would consume approximately one hour per security per day. An evaluator would have to perform the work, which would consume approximately 47,000 hours, at substantial cost.

- Nearly four years of evaluated pricing history for all securities delivered to NFS: Taking into account just the universe of CMOs (approx. 135,000 securities) this equates to well over one hundred million evaluations.

8. The foregoing are examples of the burden and costs that IDCO and PRD would be forced to incur in responding to the first of the eight requests in the arbitration subpoena, and the figures set forth above do not include internal and

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Attorneys at Law
Los Angeles

external legal costs associated with production of the documents, which are likely to be considerable.

9. Responding to the subpoena's other seven requests would only increase the costs to IDCO and PRD. For example, the breadth of the requests and the sweeping nature of the subpoena's definitions would require that employees' email files be restored, and there is no limitation in the subpoena in terms of which employees' e-mail files could contain relevant information, thus requiring restoration and review of all employees' email files. The restoration could take approximately 22 weeks, and the costs of restoration alone would be approximately $288,000. This cost does not include the actual searching and review of the e-mails. It is difficult to estimate the costs associated with such searching and review, but such tasks would greatly increase the costs of responding to the subpoena, far in excess of the figures set forth above. Moreover, the request for non-privileged files in the possession of Interactive Data's Legal Department (Request No. 3) would be expensive, as it would necessitate a careful privilege review by in-house and outside attorneys. Responding to request number 6, which seeks all documents reflecting payments received from NFS and/or Brookstreet, would also be extremely time consuming and disruptive, particularly given the subpoena's broad definition of "Subject CMOs." All documents reflecting billing and payments are saved in hard copies and archived, necessitating the identification of responsive account numbers and the archived boxes containing their information. Review of those boxes for responsive information would be expensive and disruptive, as it would take several weeks, and would need to be performed by an employee with knowledge of the billing system.

McDermott Will & Emery LLP
Attorneys at Law
Los Angeles

I declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on August 15, 2008, in Bedford, Massachusetts.

Sigal Lewkowicz

SIGAL LEWKOWICZ

BST99 1584658-3.074531.0016

McDermott Will & Emery LLP
Attorneys At Law
Los Angeles

STATE OF MASSACHUSETTS MIDDLESEX COUNTY

On this 13th day of August, 2008, before me, the undersigned notary public, personally appeared Sigal Lewkowicz, proved to me through satisfactory evidence of identification, which was Massachusetts Driver's License, to be the person whose name is signed on the attached document in my presence.

Wendy S Cabral

Wendy S. Cabral, Notary Public

My Commission Expires: November 1, 2013

EXHIBIT C

McDermott
Will & Emery

Boston Brussels Chicago Düsseldorf Houston London Los Angeles Miami Munich
New York Orange County Rome San Diego Silicon Valley Washington D C
Strategic alliance with MWE China Law Offices (Shanghai)

Mark W Pearlstein
Attorney at Law
mpearlstein@mwe.com
617 535 4425

May 20, 2008

VIA FACSIMILE AND MAIL (619) 696-5393

Bradd Milove, Esq.
Miller & Milove
7525 Fay Avenue, Suite 200
La Jolla, CA 92037

Re: *Dodger, Inc. and Gold, Inc. et al. v. Brookstreet Securities Corp. et al.*
FINRA Arbitration No 07-02060
Subpoena to Interactive Data Corporation

Dear Mr. Milove:

This firm represents Interactive Data Corporation ("Interactive Data") in connection with the above-referenced arbitration subpoena, which was served upon Interactive Data on Friday, May 16, 2008. Interactive Data objects to the subpoena for the reasons set forth below.

As an initial matter, the subpoena is unreasonably broad, and would impose an enormous burden on my client, which, as you know, is not a party to the arbitration. *See* Fed R. Civ. P. 45(c) (stating that "a party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense" on the entity subpoenaed) In light of the sheer volume of documents requested and the difficulty of locating all potentially responsive documents, production of documents in response to the subpoena would be unduly time consuming and extremely expensive.

Moreover, the subpoena purports to require my client to search for and produce a potentially vast quantity of documents by May 20, two business days after service. This is a wholly unreasonable timetable, as I am sure you are aware.

Finally, and most significantly, the subpoena is unenforceable, as it purports to seek pre-hearing discovery from a non-party in connection with a FINRA arbitration proceeding subject to the Federal Arbitration Act. *See* 9 U S C. § 7. While an arbitrator may issue subpoenas requiring non-parties to appear at and bring documents to an arbitration hearing,[1] courts have held that arbitrators do not have the power to require non-parties to submit to pre-hearing discovery. *See,*

[1] Even then, however, such subpoenas may only seek items "which may be deemed material as evidence in the case." 9 U S C § 7. The voluminous nature of the subpoena's requests indicates that the subpoena is not limited to documents that could be considered "material evidence," and instead is much broader

EXHIBIT C17

e.g., *Hay Group, Inc. v. E.B.S. Acquisition Corp.*, 360 F.3d 404, 411 (3rd Cir. 2004) (holding that an arbitration panel does not have the power to issue a subpoena for pre-hearing document production from a non-party); *Comsat Corp. v. National Science Foundation*, 190 F.3d 269, 276 (4th Cir. 1999) (holding that the arbitrator did not have the power to issue a subpoena for pre-hearing discovery to a non-party in the absence of special need). The undue breadth of the subpoena at issue here underscores the reasoning of these courts: "Under a system of pre-hearing document production, . . . there is less incentive to limit the scope of discovery and more incentive to engage in fishing expeditions that undermine some of the advantages of the supposedly shorter and cheaper system of arbitration." *Hay*, 360 F.3d at 109. *See also Comsat*, 190 F.3d at 276 ("The rationale for constraining an arbitrator's subpoena power is clear. Parties to a private arbitration agreement forego certain procedural rights attendant to formal litigation in return for a more efficient and cost-effective resolution of their dispute. A hallmark of arbitration – and a necessary precursor to its efficient operation – is a limited discovery process.").

Accordingly, Interactive Data respectfully declines to produce documents in response to the subpoena. To the extent that you file an action in federal court seeking enforcement of the subpoena, Interactive Data intends to oppose any such action. If, contrary to law and fact, such a court were to enforce the subpoena, Interactive Data would seek an order conditioning its compliance with the subpoena on your clients' payment of its costs and expenses of responding to the subpoena, including its attorneys' fees.

Please do not hesitate to contact me if you have any questions about this matter.

Sincerely,

Mark W. Pearlstein

cc: √Laura McLane, Esq.

BST99 1572376-1.074531 0016

EXHIBIT C18

EXHIBIT D

MILLER & MILOVE

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June 3, 2008

Mark W. Pearlstein
McDermott Will & Emery
28 State Street
Boston, Massachusetts 02109-1775

VIA FACSIMILE: 617-535-3800 AND U.S. MAIL

Re: Dodger Inc. and Gold Inc. et al. v. Brookstreet Securities Corp., et al.
FINRA Case No. 07-02060
Subpoena to Interactive Data Corporation

Dear Mr. Pearlstein:

Reference is made to your letter dated May 20, 2008 to Mr. Milove of this firm which objects to the production of documents on behalf of Interactive Data Corporation.

With respect to the argument that the request is unreasonably broad, we note that the rules of FINRA provide for the issuance of a subpoena after providing an opportunity for parties to object. The objection that the request is unreasonably broad was fully vetted and the subpoena was issued after this objection was duly considered by the Panel, which conducted an in person pre-arbitration conference in part to consider this matter on March 27, 2008. Indeed, the Panel's ruling narrowed the scope of the subpoena.

With respect to the argument that production would impose an enormous burden the argument is unsupported We are willing to consider a claimed hardship supported by specific facts relating thereto. However, we have been provided no facts supporting the bald assertion of hardship.

With respect to the argument that the time period for production is unreasonable, we are sympathetic. The short period for production was the result of an unforeseen delay in obtaining the subpoena from FINRA after submission. We would grant reasonable time for compliance if your client was inclined to comply with the subpoena.

With respect to your argument that the subpoena is unenforceable as pre-hearing discovery, you cite authority which acknowledges a split in the opinions on the subject and in any event is readily distinguishable where state law, such as California, permits the issuance of the subpoena

EXHIBIT D19

We request that you reconsider the arguments and objections and contact us by Friday, June 6, 2008 if there is any intent to comply with the subpoena.

Please contact the undersigned with any questions or comments.

Very truly yours,

Brian D. Miller

BDM/lo
C07004041 ltr

EXHIBIT D20

EXHIBIT E

McDermott
Will & Emery

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New York Orange County Rome San Diego Silicon Valley Washington D C
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Mark W Pearlstein
Attorney at Law
mpearlstein@mwe com
617 535 4425

June 10, 2008

VIA FACSIMILE AND MAIL 619.696.5393

Brian D. Miller, Esq.
Miller & Milove
7825 Fay Avenue, Suite 200
LaJolla, CA 92037

Re: *Dodger Inc and Gold Inc et al. v Brookstreet Securities Corp, et al*
FINRA Case No. 07-02060
Subpoena to Interactive Data Corporation

Dear Mr. Miller:

I am writing in response to your letter to me dated June 3, 2008.

As an initial matter, your letter indicates that the parties had the opportunity to object to the breadth of the arbitration subpoena in proceedings before the arbitration panel. However, as you know, Interactive Data Corporation ("Interactive Data") is not a party to the arbitration, and did not participate in such proceedings.

You have asked for more specific information regarding the burden that complying with the arbitration subpoena would impose on my client, and below we endeavor to supply you with details demonstrating, by way of example and without limitation, the overly broad nature of the subpoena and the unreasonable burden and expense that responding to it would impose on Interactive Data.

First, the definitions in the subpoena, which shape the document requests, are sweeping and overly inclusive. For example, the definition of "Interactive Data Corporation" or "IDC" purports to include several businesses that have no connection whatsoever to this matter, as well as their employees. Specifically, the entity that produces the evaluations is Interactive Data Pricing and Reference Data, Inc. ("PRD") The definition of "Subject CMOs" is also enormously overbroad, as it calls for "Collateralized Mortgage Obligations, derivatives and all other securities appearing in client accounts including [the 50 items specifically listed]." The PRD subsidiary of Interactive Data evaluates approximately 1.2 million mortgage related securities, out of which approximately 135,000 are CMOs. In addition, the definition includes derivatives, which is a very broad term that encompasses many types of fixed income and equity instruments. Moreover, as the definition also includes "all other securities appearing in client

EXHIBIT E21

accounts," it purports to encompass the full universe of the more than 6 million securities that PRD covers.

The document requests themselves are also unreasonably broad. Responding to them would be extremely costly and would require very substantial effort by the Company's employees and attorneys. For example, responding to the first request, which calls for "[a]ll documents relating to the pricing of the 'SUBJECT CMOs' on behalf of NFS and/or Brookstreet Securities from January 2004 through September 2007," could consume an enormous amount of time, at significant expense. NFS receives a full universe file of CMOs on a daily basis, and Interactive Data and PRD are not privy to information regarding which securities are held by NFS' clients. Accordingly, providing responsive data regarding the CMO universe would require the Company to search and review the following types of databases and sources of information:

- Nearly four years of evaluated pricing history for all securities delivered to NFS: Taking into account just the universe of CMOs (approx. 135,000 securities) this equates to well over one hundred million evaluations.

- The tracking query database: In order to research a specific security identifier and its relationship to a client, it is estimated that approximately 15 minutes would be spent per identifier to produce the available information. Therefore, to research the full universe of CMOs, approximately 33,750 hours would be required. Moreover, due to confidentiality considerations, additional time would be required in order to ensure that documents do not contain records of communications with NFS that relate to NFS clients other than Brookstreet.

- Hard copy files and data: Based on the subpoena's definitions and the breadth of the first request, all data taken into account in performing evaluations would have to be reviewed, which includes a substantial amount of proprietary data contained in hard copy files, many of which are archived. The process would be labor intensive and, due to the nature of the materials sought, would have to be performed by employees of PRD with specific subject matter expertise, causing substantial disruption to PRD's business for a protracted period of time.

- Email databases: As an initial matter, the breadth of the first request may require that employees' email files be restored. Moreover, based on the broad nature of the definitions in the subpoena, searching email files will be extremely cumbersome, particularly, for example, given difficulties in identifying every NFS employee, attorney, and agent, and given the likelihood that many such emails contain confidential or privileged information, or information regarding clients other than Brookstreet.

The foregoing are examples of the issues raised by just one request in the arbitration subpoena. The subpoena's other requests raise similar issues, as well as additional concerns. For example, the request for files in the possession of Interactive Data's Legal Department (Request No. 3) raises serious concerns from a privilege and attorney work product standpoint, as I am sure you can understand.

Moreover, we believe that the vast majority of the documents you seek in the arbitration subpoena are available from the parties to the arbitration. In these circumstances, it is unnecessary to obtain the same documents from my client, a non-party to the arbitration, at substantial burden and expense.

Finally, based on the case law which holds that subpoenas to non-parties for pre-hearing discovery are unenforceable in arbitration proceedings subject to the Federal Arbitration Act, 9 U.S.C. § 7, Interactive Data continues to respectfully decline to produce documents in response to the arbitration subpoena. *See, e.g.*, *Hay Group, Inc. v. E.B.S. Acquisition Corp.*, 360 F.3d 404, 411 (3rd Cir. 2004) (holding that an arbitration panel does not have the power to issue a subpoena for pre-hearing document production from a non-party); *Comsat Corp. v. National Science Foundation*, 190 F.3d 269, 276 (4th Cir. 1999) (holding that the arbitrator did not have the power to issue a subpoena for pre-hearing discovery to a non-party in the absence of special need). If you choose to file an action seeking enforcement of the arbitration subpoena, we will request that the court deny the subpoena's enforcement. In the alternative, given the unduly burdensome nature of the subpoena as discussed above, we will request that any order requiring Interactive Data to comply with the subpoena be conditioned upon your clients paying the Company's costs of complying with the subpoena.

Do not hesitate to contact me with your questions or comments.

Very truly yours,

Mark W. Pearlstein

MWP/dal

cc: Laura McLane, Esq.

BST99 1574316-1 074531 0016

EXHIBIT E23

EXHIBIT F

MILLER & MILOVE

ATTORNEYS AT LAW
750 "B" STREET, SUITE 1880
OFFICE: (619) 696-5200 SAN DIEGO, CA 92101 FACSIMILE: (619) 696-5393

August 15, 2008

VIA FAX:310-277-4730 and U.S. MAIL

Thomas R. Ryan
Joshua P. Kweller
Brandon J. Roker
McDermott Will & Emery LLP
2049 Century Park East, 38th Floor
Los Angeles, CA 90067-3208

Re: Dodger v. Interactive Data Corp.
U.S.D.C. Southern District of California
Case No. 08-CV-1476-JM-POR

Dear Counsel:

We are in receipt of the Notices of Removal and the Supporting Declaration of Sigal Lewkowicz. The purpose of this letter is to schedule a telephone conversation for this Monday, August 18, 2008, at a time convenient to your office, to address:

1. Whether Respondents or either of them is willing to agree to an order enforcing the Subpoena on a narrowed basis and, if so, what Respondents would agree to produce.

2. If we are unable to resolve this despite pursuant to a discussion described above, whether Respondents or either of them would agree to an expedited discovery schedule as time is of the essence. So that you might prepare for our discussion, we request the expedited deposition of Sigal Lewkowicz and/or the person most knowledgeable with respect to Respondents search and production capabilities.

3. Any other issues which will assist in the resolution of this dispute in a timely manner.

Please leave word with our office of a convenient time to talk by telephone. We look forward to working with you in a cooperative fashion to resolve this matter with as little legal expense as possible.

Very truly yours,

Brian D. Miller

BDM:mdg

EXHIBIT G

McDermott
Will & Emery

Boston Brussels Chicago Düsseldorf Houston London Los Angeles Miami Munich
New York Orange County Rome San Diego Silicon Valley Washington, D.C.
Strategic alliance with MWE China Law Offices (Shanghai)

Laura McLane
Attorney at Law
lmclane@mwe.com
617 535 4410

August 22, 2008

Via Facsimile (619-696-5393) and U.S. Mail

Christopher J. Hayes
Miller & Milove
Symphony Towers
750 B Street, Suite 1880
San Diego, CA 92101

Re: *Dodger Inc. and Gold Inc. et al. v. Brookstreet Securities Corp., et al.*
FINRA Case No. 07-02060
Subpoena to Interactive Data Corporation

Dear Chris:

I write in follow up to our telephone conversation yesterday. I understand that you are going to communicate the substance of our discussion to Brian Miller, who was not available for the call. I look forward to hearing from him regarding the issues we discussed.

As I explained, while it continues to be our view that the subpoena is an unenforceable subpoena for pre-hearing discovery from a non-party in aid of an arbitration proceeding, we are nonetheless considering whether production on a narrowed basis would be feasible, and whether such narrowing would reduce the enormous burden and expense that responding to the subpoena in its current form would impose on my client. Any such narrowing should focus on what documents your client actually needs that it cannot, or has not, obtained from parties to the arbitration.

I informed you that Sigal Lewkowicz, the person with the most knowledge of the burdens and mechanics associated with a potential production, is on vacation out of the country until after Labor Day, and that while we are open to continuing discussions regarding proposals for narrowing the particular requests in the interim, we cannot provide a definitive answer until her return.

As to our discussion of each individual request, I informed you that, with respect to certain requests, we are internally exploring whether there is a feasible approach for reducing the burden on my client while at the same time getting you any necessary documents, to the extent you cannot get them from parties. As to other requests, I asked for more information from your firm

EXHIBIT G26

regarding your needs, and suggested potential avenues for narrowing the requests. I look forward to discussing these issues with Brian Miller when he is available.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

Laura McLane/DM

Laura McLane

LM/dm

BST99 1590695-1.074531 0016

EXHIBIT H

MILLER & MILOVE

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OFFICE: (619) 696-5200 FACSIMILE: (619) 696-5393

August 22, 2008

VIA FAX: 617-535-3800 and U.S. MAIL

Laura McLane, Attorney at Law
McDermott Will & Emery LLP
28 State Street
Boston, MA 02189-1775

Re: Dodger v. Interactive Data Corp.
U.S.D.C. Southern District of California
Case No. 08-CV-1476-JM-POR

Dear Laura:

Thank you for your letter of this date following up on our teleconference of yesterday afternoon. Your letter accurately memorializes that conference.

We write with respect to the contention that you are unable to provide a definitive answer with respect to proposals to resolve the subpoena issues until Sigal Lewkowicz, IDC's purported PMK with respect to "the burdens and mechanics associated with a potential production," who is out of the country until after Labor Day, returns. As mentioned by Brian in Tuesday's teleconference and myself yesterday, timing is Petitioners' greatest concern. The information sought from your client is essential to Petitioners' case and cannot be obtained from any other source. Given the rapidly approaching October arbitration, Petitioners would be unduly and irremediably prejudiced if forced to wait until after Labor Day to resolve these document production issues. This enforcement action was instituted for that reason alone and in hope that we could reach resolution without undue expense and court involvement.

As it is, please be advised that if we are unable to resolve this matter by Monday, August 25, 2008, we will take all steps required to ask the court to on an expedited basis. We remain willing to negotiate resolution and look forward to the courtesy of your prompt reply.

Very truly yours,

Christopher J. Hayes

CJH:lpm

EXHIBIT H28

EXHIBIT I

McDermott
Will & Emery

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Laura McLane
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For Settlement Purposes Only Pursuant to F.R.E. 408

August 25, 2008

Via Facsimile (619-696-5393) and U.S. Mail

Brian Miller, Esq.
Christopher J. Hayes, Esq.
Miller & Milove
Symphony Towers
750 B Street, Suite 1880
San Diego, CA 92101

Re: *Dodger Inc. and Gold Inc. et al. v. Brookstreet Securities Corp., et al.*
FINRA Case No. 07-02060
Subpoena to Interactive Data Corporation

Dear Sirs:

I write in response to Chris Hayes' letter dated August 22, 2008. As you know, we continue to be of the view that the subpoena is unenforceable, as it seeks pre-hearing discovery from a non-party in aid of an arbitration proceeding subject to the Federal Arbitration Act ("FAA"). *See, e.g, Hay Group, Inc. v. E.B.S. Acquisition Corp.*, 360 F.3d 404, 411 (3rd Cir. 2004) (holding that an arbitration panel does not have the power to issue a subpoena for pre-hearing document production from a non-party); *COMSAT Corp. v. Nat'l Sci. Found.*, 190 F.3d 269, 276 (4th Cir. 1999) (holding that the arbitrator did not have the power to issue a subpoena for pre-hearing discovery from a non-party in the absence of special need). We also believe that the statement in Mr. Hayes' letter that "[t]he information sought from your client . . . cannot be obtained from any other source" is wholly inaccurate, and that the majority of documents sought in the subpoena are, indeed, available from parties to the arbitration.

Notwithstanding the foregoing, last week we engaged in discussions with you regarding narrowing the subpoena, in the interest of resolving this matter short of further litigation. You indicated that you are unable to wait until next week to reach a resolution, when the person at Interactive Data with the most knowledge of the issues returns to the country, and you have indicated that you will seek expedited Court action if the matter is not resolved today. I note that last week was the first time your firm initiated discussions regarding proposals for narrowing the subpoena's enormously broad requests. This occurred only after my client filed an answer to the complaint and removed the case to Federal Court, and long after we provided detailed information to your firm about the burdens associated with responding to the subpoena in Mark Pearlstein's letter to Mr. Miller dated June 10, 2008. Moreover, when I spoke to Mr. Hayes last Thursday, I sought further information regarding certain of the requests, so that we could productively assess whether a narrowed production would be possible. To date, no responsive information has been provided.

In any event, and in a further attempt to resolve this matter without Court involvement, we make the following proposals with respect to the subpoena's individual requests:[1]

- Request No. 1: In our call last Tuesday, August 19, you indicated that you would consider limiting this request to a subset of the 50 CMOs listed in the subpoena, but were not prepared to identify which of the 50 would be the subject of such narrowing. In my call with Mr. Hayes last Thursday, I requested that information, and I renew that request here. We also propose, given the enormity of this request, that the time frame be narrowed. Subject to such reasonable narrowing, Interactive Data is willing to produce pricing histories for the narrowed subset of CMOs, notwithstanding our belief that such information is already available from the parties to the arbitration proceeding.

- Request No. 2: Interactive Data is willing to produce the termination notice to Brookstreet in response to this request, notwithstanding our belief that it is already available from the parties to the arbitration proceeding. The request is otherwise far too broad, and producing the requested documents would be at substantial burden and expense. Moreover, given that Brookstreet is itself a party to the arbitration, it is unnecessary to seek the requested documents from a non-party such as Interactive Data.

- Request No. 3: As I mentioned to Mr. Hayes last Thursday, we are evaluating the burden associated with a review of Interactive Data's legal files, and are considering producing non-privileged documents you seek, to the extent that any exist (beyond the termination notice referenced above, which Interactive Data will produce).

- Request No. 4: Interactive Data is willing to produce documents in response to this request, notwithstanding their availability from parties to the arbitration.

- Request No. 5: Interactive Data is willing to produce documents in response to this request, notwithstanding their availability from parties to the arbitration.

- Request No. 6: Interactive Data's production of documents in response to request No. 4 will satisfy this request. To the extent additional documents are sought, they are available from the parties to the arbitration. Moreover, I continue to question the

[1] The proposed production outlined herein is conditioned upon the issuance of a hearing subpoena reflecting the narrowed requests. However, we would work with you to establish a mutually agreeable date for production in advance of the arbitration hearing.

relevance of this request, and I asked Mr. Hayes for clarification in our call last Thursday. I have yet to receive a response.

- Request No. 7: In response to this request, I reiterate the proposal I made last Thursday, which is that Interactive Data is willing to produce e-mail correspondence with the four individuals identified in the request (provided that you limit the request to the subset of CMOs as requested with regard to Request No. 1, above).

- Request No. 8: This request is both onerous and unnecessary. Interactive Data will not produce communications, if any, with regulators, and the remainder of the communications sought are clearly available from parties to the arbitration. However, as noted above, Interactive Data will produce the termination notice to Brookstreet.

I look forward to hearing from you regarding the foregoing. Please do not hesitate to contact me if you have any questions.

Very truly yours,

Laura McLane

cc: Mark Pearlstein, Esq.

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*** TX REPORT ***
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TRANSMISSION OK

TX/RX NO	3113
RECIPIENT ADDRESS	80745310016916196965393
DESTINATION ID	
ST. TIME	08/25 15:57
TIME USE	00'51
PAGES SENT	4
RESULT	OK

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New York Orange County Rome San Diego Silicon Valley Washington, D.C.

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FACSIMILE

Date: August 25, 2008

Time Sent:

To:	**Company:**	**Facsimile No:**	**Telephone No:**
Brian Miller Christopher J. Hayes	Miller & Milove	619.696.5393	619.696.5200

From:	Laura McLane	*Direct Phone:*	617.535.4410
E-Mail:	lmclane@mwe.com	*Direct Fax:*	617.535.3800
Sent By:	Denise Martone	*Direct Phone:*	617.535.4429
Client/Matter/Tkpr:	074531-0016-04595	*Original to Follow by Mail:*	Yes
		Number of Pages, Including Cover:	4

Re: *Dodger, Inc. v. Interactive Data, Inc.*

Message:

EXHIBIT I32

EXHIBIT J

MILLER & MILOVE

ATTORNEYS AT LAW
750 "B" STREET, SUITE 1880
OFFICE: (619) 696-5200 SAN DIEGO, CALIFORNIA 92101 FACSIMILE: (619) 696-5393

August 28, 2008

PRIVILEGED SETTLEMENT COMMUNICATION

Laura McLane, Esq.
McDermott, Will & Emery
28 State Street
Boston, MA 02109-1775

Via Facsimile and U.S. Mail

Re: Dodger v Interactive Data Corp.

Dear Ms. McLane:

We spoke by telephone today and I indicated that I did not receive your letter dated August 25, 2008 by facsimile transmission and I did not review it until today. While we appreciate the effort to resolve the matter, we are still far apart.

First, to the extent that the proposed production is conditioned upon the issuance of a hearing subpoena, it is rejected. Any resolution must be by stipulated order for production on the subpoena which is the subject of the Petition before the Court. We are not starting the process over, it's taken us too long to get to this point and we require the production in sufficient time prior to the hearing commencement to prepare for hearing, including expert review.

We disagree with your characterizations concerning the communications concerning narrowing the subpoena production. Prior to filing we indicated a willingness in writing to discuss narrowing if there was agreement for production. IDC chose to stand on its legal objection to producing any documents in response to the subpoena, which prevented further discussion. We attempted to reopen discussion after you filed the Answer in the hope that outside counsel might have a different view.

With respect to the categories of the subpoena, we have the following views concerning the prospects of working out a resolution.

DOCUMENTS TO BE PRODUCED

REQUEST NO. 1

All documents relating to the pricing of "SUBJECT CMOs" on behalf of NFS and/or Brookstreet Securities from January 2004 through September 2007.

Comment: We have agreed that the interpretation of the "Subject CMO's" is to include only the 50 securities identified in the subpoena, which we believe resolves the undue burden argument presented in your Answer. You have suggested that the scope be limited to particular CMO's and for a limited time period and that for this IDC would produce "pricing histories." The pricing histories would presumably only include the price provided and not the documentation utilized to generate a price.

What NFS does not presumably have and which is presumably available to IDC is the documentation on which the prices were based and computations of the prices which were transmitted to NFS. To the extent we would be willing to limit the scope to a certain time frame or certain securities, we require that IDC produce the documentation upon which it relied in its initial analysis of the security and which would presumably carry over to the model utilized when priced thereafter.

Documentation with respect to changes in the modeling or pricing as time progressed is also necessary.

Without an agreement to produce information upon which the initial pricing was determined and the security modeled during the relevant time period, we will not be able to move forward on this issue.

REQUEST NO. 2

All documents relating to communications with the Boca Raton office of Brookstreet Securities Corp. (which officed Clifford Popper, amongst others) and/or Brookstreet Securities Corp. concerning Collateralized Mortgage Obligation securities and all documents concerning those securities.

Comment: Your indication of a willingness to produce the termination letter is not responsive, particularly since this is the subject of a separate request, Number 3.

REQUEST NO. 3

All non-privileged documents in the files of the IDC Legal Department relating to the termination of services to Brookstreet Securities and/or Clifford Popper.

Comment: You indicated you are reviewing the associated burden, which in our view would not be great since this request seeks documents only from the files of the IDC Legal Department.

EXHIBIT J34

REQUEST NOS. 4, 5 and 6

You have indicated a conditional willingness to produce.

REQUEST NO. 7

All documents relating to contacts, investigations and/or interviews of sources by IDC for the purpose of obtaining information utilized in pricing the Subject CMOs, including but not limited to handwritten notes, reports, records and correspondence concerning IDC communication with John Caporuscio. IDC may have also contacted Robert Pedretti, Michael Wienokowski and Joseph Valentine.

Comment: We are amenable to limiting the scope of production to the Subject CMO, as limited by any agreement.

REQUEST NO. 8

All correspondence relating to Brookstreet Securities and/or Clifford Popper, including but not limited to correspondence with NFS, Fidelity Investments, FMR corporation, the United States Securities and Exchange Commission, the NASD, FINRA and all other industry and governmental agencies, limited to the period January 2004 through September 2007.

Comment: The indication that IDC would produce the termination letter does not go far enough. No legal justification is provided for non-production of correspondence with regulators. The FINRA subpoena was issued by a regulatory authority and may properly require correspondence with regulators.

Please contact the undersigned with any questions or comments.

Very yours truly,

Brian D. Miller

BDM:mdg

EXHIBIT J35

EXHIBIT K

FINRA

Rules and Procedures

Following are documents that outline the rules and procedures of FINRA's arbitration and mediation programs.

Code of Arbitration Procedure
The Code of Arbitration Procedure includes FINRA's rules governing the areas of arbitration and mediation.

Mediation Rules
View the rules governing FINRA mediation activities.

Rule Filings and Guidance
View complete FINRA Dispute Resolution rule filings as well as announcements and guidance regarding rule information.

The Federal Arbitration Act
View Chapters 1 & 2 of the Federal Arbitration Act: General Provisions and Convention on the Recognition and Enforcement of Foreign Arbitral Awards. To view or download the entire Act, you may consult the United States Code at http://uscode.house.gov/download/title_09.php.

Discovery Guide for Arbitration Proceedings

- Discovery Guide (PDF *51 KB*)
- Frequently Asked Questions
- Notice to Members 99-90 – NASD Regulation Announces New Discovery Guide to be Used in Arbitration Proceedings

Notice to Parties-NASD's Discovery Rules and Procedures
The timely exchange of relevant documents and information between parties to FINRA arbitrations is vital to the efficient, cost-effective resolution of disputes. The purpose of this Notice is to remind all parties--claimants and respondents--that failure to comply with the FINRA discovery rules and procedures can result in sanctions.

Notices to Members
View dispute resolution-related NASD Notices to Members.

NASD Manual
View publication that includes all the NASD rules, as well as some NASD membership information.

NASD Regulation Selected Hearing Panel Decisions
View selected Office of Hearing Officer Decisions:

EXHIBIT K36

- Non-Summary Suspension Decisions (failure to pay arbitration award or settlement agreement).
- Rule 9530 Suspension Decisions (failure to pay a fee, due, assessment, or other charge).

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FINRA

Printer-Friendly
Last Updated: 7/24/08

Code of Arbitration Procedure

The Code of Arbitration Procedure includes rules governing the areas of arbitration and mediation

Code of Arbitration Procedure for Cases Filed Prior to April 16, 2007 (PDF *263 KB*)

Code of Arbitration Procedure on or After April 16, 2007 (NASD Online Manual)

- Customer Code - eff. April 16, 2007 (PDF *328 KB*)
- Industry Code - eff. April 16, 2007 (PDF *379 KB*)
- Mediation Code - eff. April 16, 2007 (PDF *28 KB*)
- Approval Order for Code of Arbitration Effective After April 16, 2007 (PDF *612 KB*)

Comparison Chart of Old and New NASD Arbitration Codes for Customer Disputes (169 pages) (PDF *679 KB*)

Customer and Industry Code Deadlines

View NYSE Arbitration Rules for any pending case with the NYSE forum prior to August 6, 2007

Printing Instructions for Online Manual

Print a Specific Section
While viewing a section of the Code, click the "Print" button at the top of the page

Print Entire Code of Arbitration Procedure
Click the "View Whole Section" button on the top of the page to view the entire Code Then click the "Print" button on the top of the page

For best results, do not use the print button on your browser or 'CTRL-P'.

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EXHIBIT K38

EXHIBIT L

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INTERACTIVE DATA CORP. and INTERACTIVE DATA PRICING AND REFERENCE DATA, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DODGER, INC.; GOLD, INC.; BORUJ, INC.; and SALOMON HELFON TUACHI, Petitioners, v. INTERACTIVE DATA CORP.; INTERACTIVE DATA PRICING AND REFERENCE DATA, INC.; and DOES 1 through 10, Inclusive, Respondents.	CASE NO. 08-CV-1476-JM-POR **SUPPLEMENTAL DECLARATION OF SIGAL LEWKOWICZ**

I, Sigal Lewkowicz, declare from my own personal knowledge or understanding as follows:

1. I am a Senior Attorney for Respondents Interactive Data Corp. ("IDCO") and Interactive Data Pricing and Reference Data, Inc. ("PRD") (collectively, "Interactive Data").

2. I submit this Declaration in support of Interactive Data's Opposition to Petitioners'

Ex Parte Application for Order Enforcing FINRA Subpoena or, in the Alternative, Setting a Hearing at the Earliest Possible Date with Leave to Conduct Discovery (the "Application").

3. Among the securities evaluated by PRD are Collateralized Mortgage Obligations ("CMOs"). PRD considers information including its proprietary models, available quotes, trade, and other market data to determine evaluations for CMOs and other securities. Evaluations constitute Interactive Data's good faith opinions as to the price that an institutional buyer in the marketplace would pay for a security in a current sale.

4. PRD provides the same evaluations to its thousands of customers, including National Financial Services, LLC ("NFS"), a defendant in the underlying arbitration. PRD is solely a source of evaluated pricing information for NFS and its other customers, and is not involved with what they do with that information, or in decisions to extend margin credit.

5. PRD had no dealings with Petitioners.

I declare under the penalty of perjury pursuant to the laws of the United States of America and the Commonwealth of Massachusetts that the foregoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on September 3, 2008, in Bedford, Massachusetts.

Sigal Lewkowicz
Sigal Lewkowicz

BST99 1591388-1 074531 0016

McDermott Will & Emery LLP
Attorneys at Law
Los Angeles

EXHIBIT L40

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DODGER, INC.; GOLD, INC.; BORUJ, INC.; and SALOMON HELFON TUACHI, Petitioners, v. INTERACTIVE DATA CORP.; INTERACTIVE DATA PRICING AND REFERENCE DATA, INC.; and DOES 1 through 10, Inclusive, Respondents.	CASE NO. 08-CV-1476-JM-POR **INTERACTIVE DATA CORP. AND INTERACTIVE DATA PRICING AND REFERENCE DATA, INC.'S MOTION FOR LEAVE TO EXCEED PAGE LIMITS**

The Respondents, INTERACTIVE DATA CORP. ("IDCO") and INTERACTIVE DATA PRICING AND REFERENCE DATA, INC. ("PRD") (collectively, "Interactive Data"), respectfully move the Court for leave to exceed the page limitations as imposed by CivLR 7.1(h) for the reasons set forth below:

1. On or about August 26, 2008, Petitioners filed their *Ex Parte* Application For Order Seeking FINRA Subpoena Or, In The Alternative, Setting A Hearing At The Earliest Possible Date With Leave To Conduct Discovery (the "*Ex Parte* Application"). Within the *Ex Parte* Application, Petitioners seek the expedited decision on the merits of the entire action, which involves a variety of complex legal and factual issues. In its attached Opposition to *Ex Parte* Application For Order Seeking FINRA Subpoena Or, In The Alternative, Setting A Hearing At

The Earliest Possible Date With Leave To Conduct Discovery (the "Opposition"), Interactive Data respectfully submits that it is reasonably necessary to exceed the page limitation by two pages in order to fully answer the *Ex Parte* Application, as the *Ex Parte* Application seeks resolution of this action's dispositive issues.

2. Interactive Data has previously filed four separate pleadings in the brief history of this civil action. This motion is Interactive Data's first request to exceed the page limit.

3. The request to exceed the page limit is not made for purposes of delay, but solely to afford Interactive Data a reasonable opportunity to present a full and proper exposition of the reasons for its opposition.

Accordingly, Interactive Data respectfully requests that the Court enter the accompanying proposed order permitting Interactive Data to exceed the page limits permitted by Civ LR 7.1(h) so that the attached Opposition may be filed in due course.

Dated: September 4, 2008

McDERMOTT WILL & EMERY LLP

By: ______________________
Joshua B. Kweller (SBN 254834)
Attorneys for Respondents
Interactive Data Corp. and Interactive Data Pricing and Reference Data, Inc.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DODGER, INC.; GOLD, INC.; BORUJ, INC.; and SALOMON HELFON TUACHI, Petitioners, v. INTERACTIVE DATA CORP.; INTERACTIVE DATA PRICING AND REFERENCE DATA, INC.; and DOES 1 through 10, Inclusive, Respondents.	CASE NO. 08-CV-1476-JM-POR **ORDER GRANTING INTERACTIVE DATA CORP. AND INTERACTIVE DATA PRICING AND REFERENCE DATA, INC.'S MOTION FOR LEAVE TO EXCEED PAGE LIMITS**

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ORDER

On this day the Court considered respondents Interactive Data Corp. and Interactive Data Pricing and Reference Data, Inc.'s Motion For Leave To Exceed Page Limits. The Court hereby grants respondents' request for leave to file their Opposition to *Ex Parte* Application For Order Seeking FINRA Subpoena Or, In The Alternative, Setting A Hearing At The Earliest Possible Date With Leave To Conduct Discovery, which consists of twenty-seven pages. The clerk of the Court is directed to accept for filing and to file the Opposition brief as tendered.

IT IS SO ORDERED this _____ day of September, 2008.

____

Hon. Jeffrey T. Miller, U.S. District Judge

McDermott Will & Emery LLP
Attorneys At Law
Los Angeles

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the following documents has been served on September 4, 2008 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule 5-4:

1. Interactive Data Corp. and Interactive Data Pricing And Reference Data, Inc.'s Opposition to Ex Parte Application For Order Enforcing FINRA Subpoena, Or In The Alternative, Setting A Hearing At The Earliest Possible Date With Leave To Conduct Discovery.

2. Interactive Data Corp. and Interactive Data Pricing And Reference Data, Inc.'s Motion For Leave To Exceed Page Limits.

3. Declaration Of Laura McLane In Support Of Interactive Data Corp. and Interactive Data Pricing And Reference Data, Inc.'s Opposition to Ex Parte Application For Order Enforcing FINRA Subpoena.

4. Index Of Exhibits To The Declaration Of Laura McLane In Support Of Interactive Data Corp. and Interactive Data Pricing And Reference Data, Inc.'s Opposition to Ex Parte Application For Order Enforcing FINRA Subpoena.

/s/ Joshua P. Kweller
Joshua P. Kweller